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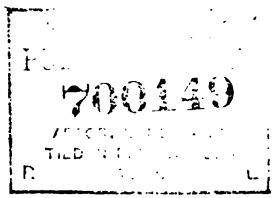

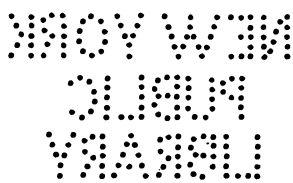

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PREFACE

BY far the most consequential inquest and execution known to history were the so-called trial and crucifixion of Jesus.

The tremendous import of those proceedings and of the Resurrection, in their effect upon human welfare, is crystalized in the development of the Christian nations, and in the present state and aims of their societies and governments.

The present age of marvelously swift processes in discovery and treatment of material resources has brought about new and vast problems in spiritual as well as material welfare, manifested in the unrest growing mainly out of alleged abuses of popular rights, and partly as phases of new aspirations of the people.

Liberty of fair opportunity, while nominally due to all members of society, has so far suffered in the realization, under the mighty stress of accumulated wealth over against the toiler for the wage of life, as to cause those social and political upheavals of recent years which are effecting revolutions of democracy, even under so-called free governments.

In connection with the incidental revolt against the wrongs charged to the oligarchy of wealth—the power which, it is alleged, directly or indirectly dominates the general situation—there has been an instinctive appeal to the primary elements of Christian ethics exemplified in Jesus. In the incidental indictment it is declared that there has been a serious failure, upon the part of the dominant forces of society and government, in the practice of the essential virtues of Christly living and doing, as ends in themselves, and

that the evils in question are chiefly the result of such apostasy.

And in the resulting search for a solvent of and emancipation from those wrongs, the character and mission of Jesus, in the light of His persecution and crucifixion, are to-day undergoing eager and intelligent study and discussion, in the sense of their application to the facts of life and the innate spiritual longings of humanity.

Inevitably, in that process of investigation of the life and purposes of the Redeemer, His treatment at the hands of the ancient oligarchy of wealth and power in the Sanhedrists of Jerusalem, as well as by the imperial Roman authority in the Procurator Pilate, is adverted to, in pursuing the two-fold end of showing an analogy between His life, times and persecution and those of the oppressed of the present day, and of holding up for emulation His sinless character and priceless ministry.

The evident purpose of that quest is the moral, industrial and spiritual reformation of society. The interest of the masses as against the too-powerful few is the justification of a cause which, as its devotees declare, must be fought out in order to bring about that reformation and the resulting amelioration of the conditions which are the subject of complaint.

On a still broader scale, the reformatory forces of society at large have become deeply concerned over the length to which the primary virtues have been left out of account in the activities of life, and in many instances have joined the ranks of the special pleaders for justice, in a general effort of redemption.

The subject of the mis-trials of Jesus became, many years ago, one of beguiling interest to the author of the following study of that theme; whose interest was deepened by the mysterious uncertainties in law and procedure which hovered over the Sanhedrist and

Roman dealings with the Accused. He therefore resolved upon a labored effort to bring the case into somewhat clearer light as to the state and application of the two systems of criminal law and procedure involved,—that of the Hebrews, and that of the Romans.

The purpose of the investigation was, first, to reach, if possible, more satisfactory conclusions as to what was the legal resultant of those proceedings before Annas, Caiaphas and the pretended or real Sanhedrist tribunal, as affecting the Prisoner Himself, and further, concerning their bearing upon the jurisdiction and functions of Pilate as Procurator of Judea and provincial juridical head of the Roman state, in the after proceedings before him. And, second, to consider the nature and effect of the transactions before Pilate, in the light of the Roman law. The judicial errors and wrongs committed by both tribunals are of course the ultimate quest of the author. Incidentally, the extent to which the Jewish forum could apply Roman laws, and *vice versa*, is considered.

The phase of Roman jurisdiction and law in a Province of the Empire at the dawn of the Christian Era involved not only an investigation of the then status of the procedure before a Roman procurator in an ordinary trial of a criminal cause, but also concerning the cognizance by a Roman Judge of a case which—like that against Jesus—had supposedly gone to judgment before the Sanhedrin, and was brought thence for re-trial or review before Pilate. And the question of Roman jurisdiction demanded, in furtherance of its solution, a study of the political system and policy of Rome as sovereign over Palestine, and, incidentally, as to how far the Hebrew law, procedure, and tribunals had been repealed or otherwise affected by Roman law and administration.

The contents of this book are submitted, not without diffidence and many misgivings, as the result of the effort made pursuant to the resolution already referred to. By way of excuse for some at least of its many imperfections, it is believed that the grave difficulties which inevitably inhere in the subject itself, owing to lack of complete historical evidence regarding the status of the laws and, in various phases, the facts involved, may be candidly suggested; conditions which leave the mind in doubt even after conscientious and persistent pursuit of the truths which lie hidden in the transactions in question.

The ground covered by this quest embraces also a study of some of the most recent efforts of a more exhaustive character made by lawyers of note, in dealing with the law and facts involved; as an incident of which study the author, while thankfully acknowledging his deep obligations to them for the great aid which their works have afforded him, has found himself unable to coincide with some of their conclusions, and disposed to claim more for Hebrew jurisdiction than is accorded to it by some of them.

But the steps leading to submission of the contents of this book for publication were taken not alone because of the hope of adding, in howsoever small degree, to the sum of information and opinion concerning the legal wrongs done to Jesus under Hebrew and Roman authority. While that thought inspired the initial stages of the labors bestowed, it became more and more apparent to the author as the process advanced, that a far more absorbing as well as significant issue than that of technical right or wrong growing out of those juridical proceedings was enmeshed in the story of Jesus' trials and of the Cross. That issue grew with advance of the study, until it became to him the luminous resolvent of the difficulties which, in answering the why and wherefore, seemed to con-

front lawyer and jurist. That issue compelled the conviction: That the persecution and sacrifice of Jesus was necessary to cause degenerate mankind to halt and stand aghast at the spectacle of its own sin thus exposed, take reckoning of itself, then profit by the example of that expiation and the promise which it as necessarily implied. And that the hand of God so directed the mission thus executed, as to baffle analysis of the divine drama save through appeal to the consciousness of the soul.

Jesus, being lowly and without guile, and a lover of erring man, by His perfect example compelled and will compel to regeneration of His followers. And all men to whom have come tidings of His life and death have been and will continue to be in some degree His followers.

It is because the author believes, to a degree which commands him in this connection, that Christ's example in the daily life of the people is as necessary to-day as at any time in the modern age, and that His precepts are more effectual in the human uplift as His personality becomes more familiar, that this study of His mis-trials is sought to be communicated; since the lesson of His life-work is brought into clearer view through any fair analysis of His contact with the corrupted judges who wrought His condemnation.

Again and again must atonement be realized in the progress of self-protection of government and of society. But the activities which arraign and punish wrongdoing must be supplemented and leavened by a return to the practice of the primary virtues exemplified in Christ Jesus. Men, searching their own hearts in comparison with Him, find there that distasteful something a contemplation of which brings them back to the olden truth, that righteousness is the jewel of all things precious; and that it is its own reward through that sweetest consciousness of soul which is

experienced as the result of loving one's neighbor and ministering to his welfare.

CHARLES EDMUND DE LAND.

Pierre, South Dakota,
November, 1914.

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THE MIS-TRIALS OF JESUS

CHAPTER I

The Judicial Wrongs Committed Upon the Trials of Jesus Succinctly Stated—Christ's Ministry, and Why He was Feared and Hated by the Sanhedrists.

CHRIST was condemned by ignoble men, and crucified, without the semblance of a fair legal trial.

He was pursued by conspiring and vengeful Hebrew hierarchs, assuming to act as the high tribunal of the Sanhedrin of Jerusalem, but moved by the spirit of a mob rather than of judicial temperament.

He was not lawfully arrested,—His betrayal by Judas was part of the plan to forcibly abduct Him, regardless of Hebrew criminal procedure, in the forbidden hours of night.

No specific charge was made against Him—only the mere imputation of Sedition. And false witnesses spoke against Him in vain. Then, through a perversion of procedure in the same pretended hearing, He was denounced as—not legally found, guilty of blasphemy upon His own alleged confession.

With a haste indicating a resolve to suppress information from and to forestall action by the people, and after a pretence of a review or confirmation of judgment, at the dawn, those persecutors, upon a legal holiday and before the people in Jerusalem could learn of what was transpiring, hurried Jesus before the Roman procurator of Judea, Pontius Pilate.

This step may have been taken because only the Roman power could legally pronounce and execute, or execute, sentence of death; or because the fanatics having Jesus in charge were bent upon browbeating Pilate into a pronouncement of His guilt for sedition, or upon demanding recognition of their claim of right under the Jewish law to judge Him for professing to be the Messiah, or the Son of God.

When Pilate found Him guiltless of sedition, he, glad to be rid of the case on jurisdictional or other grounds, sent the Galilean to Herod Antipas, Tetrarch of Galilee under the Roman sovereignty, and who was then in Jerusalem, but who was without jurisdiction; who questioned, then mocked but condemned Him not, and sent Him back to Pilate.

There again were thrust forward tactics which at last resulted in scourging of Jesus, followed by crucifixion; this through the imputation of sedition against the Roman state, or by charging that He had set Himself up as the Messianic king of Israel, or—what seems to have received more serious mental consideration by the Procurator,—through imputation of blasphemy in claiming to be the "Son of God."

Whatever the real or implied basis of action by Pilate, his motive was doubtless fear of the emperor Tiberius, who was at once the appointing power of which Pilate was a beneficiary, and the tyrant who had become the terror of the under-officials; and Pilate durst not release Jesus for fear the Jews would report to Rome that he had condoned the acts of a traitor to the Empire. Not improbably he also anticipated impending jeopardy from the possible effect of a Judean delegation to Rome with a petition against him charging certain excesses in government in Palestine.

Thus was Christ exposed to the hazard which, as He had foreseen, meant physical death. Jewish envy

and fear of His ascendency in Palestine had engendered that hatred and revenge which could not be appeased short of a capital execution.

In His ministry Christ, while teaching the simple and godly life, had fearlessly indicted the powers of the hierarchy of Israel of gross wickedness in hypocrisy, corruption, and general abandonment of the tenets and ethics of the Mosaic Law. In that warfare of souls He had awakened the common people of Galilee and portions of Judea into a revelation of new life, based indeed upon the essential relations of men to God in all ages, but which recognized redemption from sin through repentance induced by love and compassion, as the dominant note of that ministry. He had confounded the doctrinaires of the Jewish religion by His divine insight into men and things. His mission had so far resulted in His triumphal entry into the Holy City itself—the stronghold of that hierarchy. He had been boldly escorted into Jerusalem by hosts of converts among the lowly and outcast elements of society, yet under auspices which, to the guilty men in power, meant danger to their continued supremacy.

It is therefore not matter of wonderment that the Temple authorities conspired in vengeful spirit to apprehend Him as they did, and to effectuate the taking of His life regardless of law and due procedure. It was the inevitable process by which a perverted system of theocracy, grown vulgar and reckless through long lease of power, sought to stay the progress of precept and example embodied in Jesus' ministry, and which movement, if not halted, must soon compass the overthrow of that theocracy.

For Christ was born to reign and to establish the Law of Love on the ruins of the hate of prejudice and bigotry.

In that ordeal which stands the most sublime and

stupendous of all events in history, Christ, inspired of and reflecting God, and true to the Divine Plan, died to manifest the Love of the Deity, and to reprove while redeeming the Sin of the World. In that virtual Trial of erring Humanity the Son of Man proceeded orderly and without flaw or error of record, and truly judged and mercifully condemned the unyielding Criminals at the bar of the Most High.

Upon a fair legal investigation there might have been a formal condemnation of Jesus. It is possible that under some then existing schools and theories concerning the Messiah and a misunderstanding of Christ's claims to divine relationship, He might, by a competent tribunal duly convened, upon a legal investigation, have been found guilty through error of judgment,—that would have been a trial, however widely error may have crept in. Such a judicial tribunal might have convicted Him, though erroneously, for blasphemy in setting Himself up as the Jewish Messiah, a political and religious ruler upon earth, even though His sole claim was of a kingship not of this world.

But He was not tried; He was not convicted; He was not adjudged; He was not punished. His taking off was the malicious, passionate demand of enemies in power, whose performance puts to blush all sense of form or essence of a trial. There being no legal apprehension, no tribunal lawfully in session, no specific charge made, and no case upon the evidence, neither an erroneous and therefore reversible judgment, nor a valid and judicially sound judgment in law, could follow. No wrong having been proven, the scourging, the brutal abasement of the Messiahship to the mimicry of kingship, the death upon the Cross, were and could be no legal punishment.

But the Sanhedrists were facing a momentous emergency. In their descent to madness they felt

that inevitably Jesus, if not made way with, would come to rule the Jewish people by virtue of convincing them that He was the Messiah, while yet, as they seemed to believed, He would fly in the face of Jewish tradition and hierarchy. He had not been shown to have transgressed, by word or deed, the letter or spirit of the Mosaic Law.[1] But He had arraigned them for so doing.[2] In their domineering and uncompromising pride of station and power they were blind to their own weaknesses. Their one thought was that He had presumed to denounce the spirit and motives of their pharisees and scribes, and their "whole generation of vipers." It was for this invasion of their sanctity that He must die!

Still the gentle Nazarene, throwing aside substantial law and procedure and letting fall the mantle of charity upon them, even as He suffered in expiation of their sins upon the Cross,—He who was out of that last agony to become their Saviour, judged them, saying: They know not what they do.[3] These attributes in such extremity prove the Redeemer's divinity. And that Divinity is Love. His Sermon on the Mount is now exemplified by consummate love of enemies in that Sermon on the Cross.

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1. Matt. 23; 2, 3. Luke, 18; 20.
2. Matt., 23; 13, et seq. 21; 13. Mark, 7; 8-13. Luke, 11; 42-44.
3. Luke, 23; 34.

CHAPTER II

The Jewish Sectaries; Pharisees, Sadducees, Scribes, Rabbis, Essenes.

BEFORE considering the subject of legal procedure under the Jewish law, as supposedly obtaining in Christ's time, some brief incidental reference to history regarding Jewish religious thought and sentiment, and the sectaries existing at the time, may not be inappropriate, as amplifying the grounds for a study of the relations of Jesus' teachings to those systems, as also as touching the local prejudices involved.

While the Hebrews had been dominated by the pastoral, they became, under Solomon, imbued with the commercial spirit; under whose influence the trade of Israel with other nations resulted in toleration in Judea, and near the Holy City, of the worship of pagan gods. Galilee, then possessed by a Hebrew tribe, was disposed of by Solomon to the King of Tyre in view of the latter's assistance in building the Temple. Under the Babylonish Captivity religious worship spread throughout Judea from Jerusalem—where, to that age, it had found an exclusive seat in Israel. In time the "Oral Law" or Mishna of the Talmud began to develop as distinguished from the written Law of Moses; and the idea of a deliverer as the Messiah began to take form. By degrees the concept of the soul's immortality—a belief seemingly not inculcated by the Mosaic Code—grew into the Jewish faith.

The conquest of Palestine by Alexander in later times brought Greek power and language into the

scale, as a molder of the Hebrew mind and faith into changed and broadened beliefs, involving in some degree the philosophic culture of Aristotle, Socrates, and Plato.

Lastly, the dominance of Judea by the Romans introduced law as sovereign on one hand, and religious tolerance consistent with supremacy of the Roman religion on the other; all leavened by the mastery of Greek over Roman thought and philosophy, resulting in triumph of the pagan spirit, in marked degree, over Hebrew religion and the sectaries.

Those epochs, and the incidental influences, covering a thousand years from Solomon to the Christian Era, saw multitudes of Greek gods in the image of man, who was immortal, superimposed upon the Hebrew faith in God, after whom man was imaged; saw Roman gods idealizing the attributes of utility; and both systems, each headed by its dominant god, finally modifying the spirit of Hebrew faith, while yielding to the sovereignty of the one God of Israel. Galilee became transformed, through her peopling by Phoenicians, Canaanites, and Greeks, into anti-Jewish territory, in which the few remaining Hebrews were regarded at Jerusalem as unorthodox, and whose liberality in faith brought them into disrepute. So that in Judea "Can there any good thing come out of Nazareth?"[1] was the expressed scorn and reproach against Jesus, who came from thence. The blood of some of those Galileans "Pilate had mingled with their sacrifices."[2]

Among the Hebrew sectaries, the most numerous were the Pharisees, who, says Rosadi, formed "the strongest and yet the most dangerous privileged com-

1. John, 1; 46.
2. Luke, 13; 1.

mentator of traditional truth."[3] They claimed to be at once the exclusive depositaries of the traditions of the "oral law," and the sole interpreters of the sacred texts, denying the right of free interpretation recognized by the other sects. Their sophistry and pedantry aimed at obscurity of the law, "which in their hands became the worst weapon of persecution and imposture." They were extremely hypocritical, which feature was manifested in many ways; in covering their faces, or closing their eyes, in public; in ostentatious prayer; in being seated in first, or reserved places in synagogues; and in the trumpted heralding of their almsgiving. They shared with the Scribes, belief in the soul's immortality.

The Sadducees discountenanced tradition, and clung to the written law. They were of the ultra aristocratic element of the Hebrews. While less fanatical, they were more positive in their views than were the Pharisees. They rejected the idea of immortality, and the resurrection of the body.[4] These sectaries are said to have inherited certain class privileges by right of descent.

The Scribes, from being originally officials of a quasi-military character, developed into doctors of the Jewish law. They were preservers of tradition concerning the law. They also acted as police of the Temple; and were supporters of the priesthood. While not lawyers in the modern sense of the word, their functions under the Hebrew theocracy caused them to be venerated as expositors, or doctors of the law.[5] Those activities rendered them theologians as well. They were among the Wise Men of Israel.

3. "Trial of Jesus," 5.
4. Josephus, Ant., XVIII, I, 4.
5. Eidersheim, "Life and Times of Jesus the Messiah," Vol. 1, 93.

The most eminent of them taught the youth, and those destined to become rabbis.

The Rabbis, or Rabbins, held disputations not strictly sectarian, but touching the civil and religious interpretation of the law.[6] Their realm was that of the schools. They were very conceited and arrogant.[7]

Distinctly different from the foregoing, in spirit and aim, and most devout among the Judean sectaries, were the Essenes; who shrank from the world into pastoral retirement. They were devotees of Zoroaster's doctrine of the soul's separation from the body. Keeping aloof from trade's corruption, they shared their goods in common.[8] Looking askance at theological refinement, they loved the mysteries of the material world, and made a study of the natural sciences. Charity was a leading faculty; they ministered to the sick and the poor. From their ranks came some of the most devoted spiritual reformers of those times. Speaking of the tendency of this sect to shun wealth, Renan says: "The infant Christianity, moreover, in this only followed the footsteps of the Essenes, or Theraputae, and of the Jewish sects founded on the monastic life. A communistic element entered into all those sects, which were equally disliked by Pharisees and Sadducees."[9]

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6. Rosadi, "Trial of Jesus," 6.
7. Matt., 23; 6, 7. Luke, 11; 43.
8. Rosadi, 6.
9. "Life of Jesus."

CHAPTER III

The Great Sanhedrin—Jurisdiction of, Judicial, Political, and Legislative—Membership of—Quorum—Three Chambers, Priests, Scribes, Elders—Vices of Membership in Jesus' Time—The Jewish Messiah.

THE word "Sanhedrin" (or Sanhedrim) seems to have been first used, in connection with Hebrew jurisprudence, during the later period of Jewish nationality. Various high authorities unite in declaring that the use of the word in this relation arose during the Greek or Maccabean period; which contention derives force from the fact of Greek influence in Palestine in that age. The body so designated is known in the Talmud as the "Tribunal of the Maccabees" as well as "Sanhedrin." It is from the Greek *Synedrion,* or *Sunedriun,* meaning "sitting together."[1] Numerous writers hold, with the Mishna, that the Sanhedrin was the survival of, if indeed it was not generically identical with the body originally established as the Mosaic Council of the Elders, or the Seventy, created in the Wilderness, as narrated in Numbers 11; 16, 17.[2] And as Moses was its presiding officer, the traditional and authentic number of seventy-one as its membership would thus be verified. The Jewish writers also termed it "The Council of Ancients."

Mendelsohn, in his "Criminal Jurisprudence of

1. Com. on Gospel of Matt., by Broadus, p. 546.

2. "Criminal Jurisprudence of the Ancient Jews," by Mendelsohn, note 196. Chandler, "Trial of Jesus," Vol. 1, p. 103.

The Ancient Hebrews," states that Rabbinic lore identifies the Sanhedrin with the Council of Elders "established by Moses, and consisting of an equal number, including Moses himself; and, accordingly, claims that this august body continuously existed from the days of Moses until the extinction of the Jewish patriarchate."[3] On the other hand, and because the word itself is of Greek extraction, and from its historical connection with the Maccabean age, some modern investigators have referred its origin to that epoch. Mendelsohn inclines to acceptance of the traditional opinion, "believing that whatever vicissitudes it experienced, the council maintained a continuous existence from the very beginning of Israel's independence." And he refers to the learned historian Raphall,[4] who sums up his own search into the origin and growth of the Sanhedrin in this wise: "We have thus traced the existence of a council of *Zekenim* (elders) founded by Moses, existing in the days of Ezekiel, restored under the name of *Sabay Yehudai* (elders of the Jews) under the Persian dominion, known as *Gerousia* (elders) during the supremacy of the Greeks, and as *Sanhedrin* under the Asmonean kings and under the Romans." Raphall also contends that the use of the Greek name "affords no proof against the antiquity of its institution; since, however often the name was altered, the council itself never ceased to exist." Chandler says of it: "It is called Gerusia, or Senate, in the Second book of the Maccabees. Concilium, or Grand Council, is the name found in the Vulgate," and that the Talmud "usually terms it Sanhedrin, the name most frequently employed in the Greek text of the Gospels, in the writings of the Rabbins, and in the works of

3. Note 196.
4. "Post Biblical Hist.," Vol. 2, pp. 106-110.

Josephus."[5]

According to the Talmud, there were three classes of Hebrew courts, namely: The Great Sanhedrin, the Lesser Sanhedrin, and the Court of Three;[6] the latter consisting of three members, having jurisdiction in civil affairs, and in criminal cases involving fines and flagellation only; and established in all places, however small.

The Lesser, or Minor, Sanhedrin, consisted of twenty-three members, and was instituted in all cities or towns of Palestine having a male population (Rosadi says "adult male population"[7]) of at least one hundred and twenty souls; while in other countries inhabited by Jews, each district or province was provided with such a tribunal. It had jurisdiction over criminal cases, including capital crimes, and over civil matters.[8]

The Great Sanhedrin of Jerusalem was the supreme judicial tribunal of Judea.[9] It was similar in functions to the Senate of Rome and the Areopagus of Athens. It was far more than a judicial tribunal. It had, says Mendelsohn, supreme authority in all matters civil and political, social, religious, and criminal.

The Great Sanhedrin had jurisdiction in cases involving a whole tribe; or regarding a false prophet; or the High-Priest; of questions of war and peace, beside certain other jurisdiction; this according to the Mishna of the Talmud.[10] And as there are no

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5. "Trial of Jesus," Vol. 2, p. 103.
6. "Sanhedrin," 2a, 17b. Mendelsohn, p. 87. Rosadi, "Trial of Jesus," pp. 164, 243.
7. "Tr. of Jes.," p. 164.
8. Mendelsohn, p. 88.
9. Rosadi, p. 164. Chand., Vol. 1, p. 120.
10. "Sanhedrin," Chap. I, 5.

strictly historical data from which the organization of this tribunal of the Hebrews can be determined, resort must be had to the Talmud. That vast repository of rabbinical lore, embracing the religious traditions of the people of Israel, which when from time to time reduced to writing comprehended what had for ages been handed down through the treasury of memory, a mystery yet to all but a few great scholars, long the subject of malignant attack and disputation, —is, with all its faults, the almost exclusive source of authority upon the origin and functions of the Great Sanhedrin. Would that what it was and could lawfully do when Roman supremacy was extended over Judea, were matter of greater certainty.

Edward Gibbon, the historian of Rome, declares that it was the supreme court of appeal; that in criminal matters it tried all offenses committed by men in public station, or that affected the peace and majesty of the people. Its most frequent and serious occupation was the exercise of judicial power. As a council of state and as a court of justice it possessed many prerogatives. Every power was derived from its authority, every law was ratified by its sanction. It took cognizance of the conduct of priests and kings.[11] According to Josephus, Herod the Great was arraigned as a criminal before its judges. Appeals were allowed to it from a Minor Sanhedrin.[12] Its opinion was final.[13]

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11. Mendelsohn, pp. 88, 90. Sanh. 19a; Maimonides, H. Sanh. II, 5. Mendelsohn says: "With the change of dynasties in the Maccabean epoch, the subjection of royalty to the judiciary was abolished, owing to overt insubordination of Hyrcan II, to the enactments of the Synhedrion." Note 167.

12. Mendelsohn, p. 99. Chand., Vol. 1, p. 120.

13. Mendelsohn, p. 99. Tosefta Sanh. VII, Sec. 1; Sifre II, Sec. 152; Sanh. 88b. Chand., Vol. I, p. 120.

Its full membership was seventy-one.[14] A quorum consisted of twenty-three members;[15] and in order to condemn for a criminal offence a majority of two was necessary.[16] The regular court days were Mondays and Thursdays,[17] but court might be held whenever necessary.

To entitle a man to be a member of the Great Sanhedrin, he must have been worthy, of piety and unblemished character, a Jew, thoroughly versed in the traditional and the written law, familiar with many languages, and with the sciences currently taught; affable—but not in the sense of mere popularity; of good appearance, and not haughty. He must have been advanced in years of experience, and the father of a family. Such are the records of the

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14. Mendelsohn, p. 88. Rosadi, p. 164. Chandler says that, theoretically, the seventy-one members constituting the three chambers (of Priests, Scribes and Elders) "were to be equally divided—making a total of sixty-nine, who, together with the two presiding officers, would constitute the seventy-one." Tr. of Jes., Vol. 1, p. 105. Braudus observes: "The Mishna supposes that the Sanhedrin was a survival of the Council of Seventy formed by Moses (Num. 11; 16), and infers that it also must have contained seventy members, or adding one for Moses, then seventy-one. It is probable that this was the number, but we cannot certainly determine." Com. on Matt., p. 546.

15. Mendelsohn, note 222; Tosefta Sanh., VII, Sec. 1; Sanh. 88b. "This court was not obliged to have all its members present at the session. Twenty-three members thereof, i. e. as many as constituted a Lesser Synhedrion, were considered a legal quorum for the transaction of its business"; citing also Sanh. 37a.

16. Mendelsohn, p. 143. Sanh. 2a, 32a.

17. Mendelsohn, p. 97. B. Kama 82a; Maimonides, H. Ishuth, X, 15.

Talmud.[18]

In addition to the Great Sanhedrin, two of the Minor Sanhedrins of twenty-three members each, sat in Jerusalem.[19] And as to appeals, there existed, beside the resort to the Great from the Minor Sanhedrin, an appeal from one Minor Sanhedrin to another "deemed of higher authority," according to Benny, in "The Criminal Code of the Jews." This latter feature in procedure was probably due, says Chandler, to the fact that colleges and schools existed in the larger towns, "some of whose professors were doubtless either advisers or members of the local Sanhedrin."

There were two presiding officers of the Great Sanhedrin. One was styled *Nasi* (Prince, *princeps*). The other, known as the *Father of the Tribunal* (Ab-beth-din), was the vice-president;[20] and the chief's second deputy was called Hakham (wise man, *Quaesitor*). The president of the Lesser Sanhedrin was the *Rosh*[21] (head, *praetor*). The remaining officers of the Great Sanhedrin were the Secretaries, and two messengers or servitors[22] (*Apparitores*); and designated by the Hebrews as *Shoterim,* who executed process and sentences.

Most Jewish writers declare that there were two scribes, or secretaries,[23] of the Sanhedrin; but a num-

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18. Mendelsohn, p. 92, and his numerous citations from the Talmud in his notes 203 to 209. Rosadi, p. 164.

19. Mendelsohn, p. 88; Sanh. 86b; 88b.

20. Mendelsohn, p. 90, and notes. Rosadi, p. 165.

21. Mendelsohn, p. 90.

22. Mendelsohn, p. 91. Sanh. 34a, 36b, 17b; Maimon. H. Sanh. I, 9. Rosadi, p. 165.

23. Mendelsohn, p. 91. Sanh. 34a, 36b. Rosadi, p. 165, and his further citations from Talmud.

ber of others hold that there were three.[24] Benny says: "Three scribes were present; one was seated on the right, one on the left, the third in the centre of the hall. The first recorded the names of the judges who voted for the acquittal of the accused, and the argument on which the acquittal was grounded. The second noted the names of such as decided to condemn the prisoner and the reasons on which the conviction was based. The third kept an account of both of the preceding so as to be able at any time to supply omissions or check inaccuracies in the memoranda of his brother reporters." Mendelsohn expresses the same view, each citing from the Talmud. While Rosadi declares: "Two scribes, doctors of the law, were present at each sitting and compiled the minutes of the proceedings";[25] citing from the same great repository of information. It is of course possible, and not improbable, that these variant authorities from the Talmud referred to different periods of the existence of the Sanhedrin, involving a change in the practice.

Some writers contend that the presidency of the Great Sanhedrin belonged of right to the High-Priest.[26] The historical evidences, however, seem to show that many of its presidents were non-members of the priesthood.

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24. Mendelsohn (note 201) says: "There is, however, another tradition which speaks of *three* secretaries; one of whom noted down all proceedings on the side of the prosecution, the other those of the defence, while the third transcribed all the proceedings on both sides (Sanh. 36b)."

25. P. 165.

26. Broadus, Am. Com. on Matt., 546. Chandler quotes from Maimonides in his "Constitution of the Sanhedrin": "Whoever surpassed his colleagues in wisdom was made by them chief of the Sanhedrin."

The Sanhedrin was made up of three Chambers,—of Priests, Scribes, and Elders.[27] Of the first of these ranks there could be, under the Mosaic Law, but one Chief Priest, his tenure for life.[28] Under Herod and Roman rule, however, they were elected nearly every year,—procurators appointing and deposing as did the Pretorians the Emperors;[29] money was the determining factor, and it is said that wealth was the condition and its corruption the rule of action.

There were some twelve priests who, at the time of Christ's crucifixion, had been or were to be high-priests and ex-officio members of the Sanhedrin, whose names have come down to us through preservation in the Talmuds of Jerusalem and of Babylonia, in Josephus and other histories and chronicles of the times; and some six simple priests, who together composed the Chamber of Priests. Several of the high-priests were dishonorable; they were all vicious intruders who usurped power in contempt of the established order. They are said to have robbed the simple priests, "some of whom died of want."[30] They were perverters of the Mosaic Law—Pharisees whose craving for power was marked by hypocrisy and that ostentatious show which Jesus could not but decry, and which was a vile mockery of Jewish religion. Even the Talmud, repository of the faith of the Hebrews, voices the general reproach in terms of "the curses of God," recording that "their servants strike the people with staves."[31]

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27. Matt., 16; 21. Mark, 15; 1. Luke, 22; 66. Chand., p. 105.

28. Josephus, "Antiquities," XV, Chap. III, 1. Chand., Vol. 2, p. 293.

29. Jos. "Ant.," Book XVIII, Chap. II, 3; Book XX, Ch. II, 1, 4. Chand. Vol. 2, p. 293.

30. Jos. "Ant." XX, VIII, 8.

31. "Pesachim," or "of the Passover," fol. 57.

Of the second Chamber, of the Scribes, the record of some fourteen has survived the ages in identity and repute, through the same sources.[32] Of them all, save Gamaliel, the accounts show pride as their predominant trait; to whom the prefix "Rabbi" was first applied in Christ's time. To be assigned to upper rooms, chief seats; to receive greetings in the markets, and to be addressed as "Rabbi, Rabbi," was their delight and ambition; who in their own conceit and under the rule they themselves imposed were to be preferred before kings. Excommunication resulted from failure to do them due reverence—to oppose them was to attack Jehovah!

The third Chamber, that of the Elders, lowest in the scale of officials in the Great Sanhedrin, was composed of men few of whose names have been preserved.[33] But two of them—Nicodemus and Joseph of Arimathea—are among the most illustrious of that age. Ten names are placed in this list; making a total of forty-three out of the seventy-one composing the Great Sanhedrin. Nearly the whole ten are said to have been wealthy Sadducees,[34] known among the sects as materialists.

The priests were, as a whole, mostly Pharisees,[35] although it is believed that among those highest in power in the Sanhedrin at the time in question, the majority were Sadducees.[36] The Messiah expected by the Pharisees was to subdue the enemies of Israel throughout the world; impose taxes on all nations, and enforce by effective penalties their own arbitrary

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32. See Chand. "Tr. of Jes." Vol. 2, pp. 303, et seq.
33. Id., pp. 318, et seq.
34. Id., p. 322. Jos. "Ant." XVIII, I, 4.
35. Chandler, Vol. 2, pp. 302, 324.
36. Broadus, Com. on Matt., p. 546. Chand., Vol. 1, p. 339.

impositions. The Scribes looked for a Messiah who, like Solomon, would establish a hierarchy of learning.[37] While the Elders, composed in substance of Sadducees "run low into the sewers of immortality," would make of Jerusalem a center of worldliness and of material riches, to be transferred thence by subdued Gentiles, slaves of Israel.

37. Chand., Vol. 2, pp. 324-5.

CHAPTER IV

Jesus' Ethics as Opposed to the Chief Sectaries—His Denunciations—His Followers and the Messiahship—His Perils—The Bible the Sole Record of the Facts—The Evangelists as Witnesses.

BUT Christ had drastically exposed the iniquities of the high-priests. He had proposed abolition of taxes. He had commended the humble in spirit. His disciples were mostly unlearned fishermen. Against covetousness of worldly goods He had advised. He had bravely ejected from the Temple those who had profaned its precincts in the name of traffic. And His heroism had reached a climax in speech when He had fearlessly denounced the whole tribe of those in power, who were a "generation of vipers," condemning them to "the wrath to come."[1]

Preordained to peril from when the Star of Bethlehem heralded His divine mission, Jesus had, through the Flight to Egypt, been saved from Herod's massacre of the babes. He had at twelve aroused the doctors with whom He had disputed in the Temple. He had been all but thrown down the precipice at Nazareth by those in Galilee who were moved by jealousy and hatred; had been several times imperiled by efforts of the scribes and elders to apprehend Him with intent to end His life. And the anointing of His head by Mary, prophetic of kingship in the eyes of His enemies, coupled with acclaims of the followers down the Mount of Olives, who cast palm branches in the way and shouted

1. Matt., 12; 34. 23; 33. Luke, 3; 7.

"Blessed be the name of the King that cometh in the name of the Lord, Hosanna in the highest,"[2] had made them fearful that a virtual coronation had already been accorded Him. The whole record in the Gospels proves the persistent pursuit of their aim to kill Him. How well He knew this fierce feeling is manifest in many of His expressions. "If the world hate you, ye know that it hated me before it hated you"[3]—this followed immediately His precept to his disciples in the Upper Room, that they love one another.

That these demonstrations and acclamations of the multitude were regarded by various elements of the public as a declaration of kingship over the Jews, is amply evidenced. The request of the mother of Zebedee's children that her sons be granted seats on either side of Jesus in His kingdom[4]; the belief of some of His disciples that His reign would be that of a civic as well as religious chief, and their desire of official station under His administration, are among the many indications of this expectation. On the other hand, those demonstrations were looked upon by the authorities as seditious in character. They caused apprehension among the Chief Priests and Elders, and moved them to compass His death.[5] The ancient proclamation of the Jewish King, attended by salutations with palm branches, trumpet blasts and hosannas while he stood in the Temple's porch, had been so nearly parallaled in this instance as to give credence to the idea of a Messianic coronation.[6]

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2. Mark, 11; 9. Luke, 19; 37-8.
3. John, 15; 18.
4. Matt., 20; 20-1. Mark, 10; 35-38.
5. Matt., 26; 4. Mark, 14; 1.
6. Rosadi, "Tr. of Jesus.," p. 102. "The Trial of Jesus of Nazareth," by Thomas Frew Wilson, p. 32.

But the Jewish officials regarded Jesus' following as so strong that they durst not arrest Him in the Temple while teaching, or elsewhere by day. Two days before the Passover "the chief Priests and the scribes sought how they might take him by craft, and put him to death. But they said, not on the feast day, lest there be an uproar among the people."[7] They had need of craft, and of striking in the night, when no assembly was present to protect Jesus, and when a pretended investigation could be had without the knowledge or interference of the public. And to know where to strike, they bargained with Judas to betray Him. Jesus had foreshadowed this betrayal, as we know, and had expected it to occur. Some authorities hold to the belief, we think inadvisedly, that He had changed His abode night after night, in and about Mt. Olivet and Bethany, to evade being seized by His enemies.

Now, as to the facts of the great Spiritual Drama: Substantial truth warrants the statement, that all that is known concerning the life, trials and crucifixion of Jesus, through historical records, is found in the Four Gospels. The merest trifle of evidence to be found outside the Gospels is the brief mention, in doubtful terms, in Josephus, and a hint by two or three other writers of his day.[8] But the Evangelists' accounts are regarded as legal evidence of the facts narrated in these records.

Greenleaf, who wrote the "Testimony of the Evangelists," is generally cited upon this head; but all authoritative writers upon the law of evidence substantially coincide in laying down these rules: The law presumes to be genuine, ancient documents shown to have come from proper custody and upon whose face no evidence of forgery appears. Whoever attacks

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7. Mark, 14; 2.
8. Philo, Tacitus.

them must prove their invalidity. Speaking of the general interest of the public in, and of its confidence in the verity of the copies of the Gospels which have in numberless editions been issued, Greenleaf declares: "If any ancient document concerning our public rights were lost, copies which had been as universally received and acted upon as the Four Gospels have been, would have been received in evidence in any of our courts of justice, without the slightest hesitation. The entire text of the Corpus Juris Civilis is received as authority in all the courts of continental Europe, upon much weaker evidence of its genuineness; for the integrity of the Sacred Text has been preserved by the jealousy of opposing sects, beyond any moral possibility of corruption; while that of the Roman Civil Law has been preserved by tacit consent, without the interest of any opposing school, to watch over and preserve it from alteration."[9] This proposition might be elaborated through various phases of the law of evidence, including that of the presumption of the credibility of the Evangelists as witnesses. Suffice it to say that that presumption obtains also in this connection, in the absence of circumstances giving rise to suspicion, and must likewise be overcome, if at all, by proofs which impeach the testimony attacked. And the ordinary rules giving credence to testimony according to the probity, means of knowledge, number and consistency of the witnesses, and the relation of the testimony to collateral facts, apply here.

Matthew and John were of the Twelve. As to Mark, this affirmation seems supported by general consent among those who have investigated and whose authority commands confidence,—namely, that he it was who wrote the Second Gospel at Peter's dictation,

9. "Testimony of the Evangelists," pp. 10, 11.

or with his co-operation.[10] Luke's account bears evidence of his claim to personal knowledge reinforced by the testimony of eye-witnesses. That the first three Gospels were known to have existed in writing within thirty to fifty years after the Crucifixion, seems probable;[11] while St. John's Gospel is placed by seemingly good authority, towards the end of the first century, A. D.; Iraeneus recording that he lived until about A. D. 98. Their respective callings, their general probity as men of earnest purpose and right action, and the circumstances surrounding their respective careers, all seem to conspire to render their accounts in the premises worthy of more than ordinary credence. If the fact that some discrepancies exist in the Gospel records were regarded as discrediting them, or any of them, then courts of justice must, upon that theory, reject the common experiences which certify that variations mark the whole current of human testimony, and, in the last analysis, prove the probity of the witnesses.

The Bible, then—for the Old Testament, from which also we shall of course draw some of the factual premises, was universally regarded throughout Israel, even in the time of Christ, as a veritable record—the Bible attests the facts herein dwelt upon.

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10. See, Introduction to Clarke's Com. on Gospel of Mark, p. 11, citing Papias, Clement, Ireneus, Origen, Tertullian, etc.

11. Chandler ("Tr. of Jes.," Vol. 1, p. 27) refers to Professor Holtzman of Heidelberg, as having so concluded after prolonged study. Hovey's General Introduction to the New Testament, and other similar commentaries, seem to bear out conclusions not widely variant from that of Holtzman.

CHAPTER V

Jesus' Arrest—No Specific Charge—No Legal Mandate—The Arrest was Under Sanhedrist, Not Roman Authority—No Roman Soldiers—Supposed Powers of Jewish Police—Judas' Assistance as Illegal Informer—Jewish Criminal Procedure Concerning Arrest.

THE arrest of Jesus in or near the garden of Gethsemane on that fateful night does not, so far as any record shows, rest upon or pursue any legal charge under the Hebrew law. Rosadi, speaking of the consultation between the chief priests, scribes and elders, and Caiaphas at the latter's palace on Wednesday, Nisan 12, says: "It was finally decided to arrest Him, even though illegally, and have Him put to death,"[1] referring to the Gospels: (Matt. 26; 2) "consulted that they might take Jesus by subtilty, and kill him"; (Mark, 14; 1) "sought how they might take him by craft, and put him to death"; (Luke, 22; 2) "sought how they might kill him."

They had not succeeded in entrapping Jesus into any admission of guilt, in their recent attempts in that direction. Nor can it be inferred with certainty that they contemplated arresting Him for a capital offence, since it is not at all certain that they believed that He could be shown to be guilty of any such crime.

Was there any legal formality whatever in His apprehension?

1. Rosadi, "Tr. of Jes.," p. 114.

There seems to be no evidence extant that there was any order or mandate for the arrest. Indeed, it is extremely doubtful whether there was any such process, or writ, known to the Jewish law.

The police officers of the Sanhedrin who were empowered to perform the police work of Jewish criminal procedure, and to execute sentences, were, according to the general authorities, the servitors, or *Shoterim.*[2]

Chandler says: "His capture was not the result of a legal mandate from a court whose intentions were to conduct a legal trial."[3] But, regardless of what may have been the original intention of the Sanhedrists, was there any legal mandate whatever from any court? Rosadi states, concerning the seizure of Jesus: "The men who arrested Jesus were perhaps, at least in part, *shoterim* of the Sanhedrin";[4] that His capture was "the execution of an illegal and factious resolution of the Sanhedrin. There was no idea of apprehending a citizen in order to try him upon a charge which after sincere and regular judgment might be found just or well founded; the intention was simply to seize a man and do away with him." This expression, taken in connection with the above quotation from that author concerning the consultation between the Sanhedrists, seems to commit him to an agreement with the Gospel accounts that the "taking" of Jesus was solely through "subtilty" and "craft," although there may have been, in the presence of the *Shoterim,* some semblance of legal authority in the demonstration accompanying the seizure—some *colore officii* as relating to the Sanhedrin

2. Rosadi, p. 165. Saalschatz, "Laws of Moses," p. 58. Deut., 20; 5-9.

3. Rosadi, p. 237.

4. Rosadi, p. 165.

as the moving tribunal. Rosadi also cites Renan[5] as believing that "the idea of the arrest came from Annas," the ex-High-Priest and one of the chief conspirators, and thinks this not unlikely, because of Jesus' having been taken first before him and not before Caiaphas, his son-in-law, being the High-Priest. He adds, that the fact that resistance by Simon Peter to the arrest, by seriously wounding one of the band, without being punished therefor, is proof that no regular order could have been given for an arrest.

But further upon this head: The apprehension of Jesus is regarded by the authorities as having been effected through the evidence of Judas and, perhaps, of Annas, as informers. Rosadi says the action of the Jews regarding the trial and condemnation "cannot be considered otherwise than under the juridical aspect of an accusation based upon the reports of informers;" that perhaps the hierarchs "did not pretend to arrest Jesus on their own authority, but only to get possession of His person in order to send Him for judgment to the Roman procurator. The act of Nisan 14 was not an arrest made in consequence of a regular information, nor, as our penal law expresses it, in consequence of public clamor."[6] Here Rosadi refers to Roman, not to Hebrew law, as regards the arrest; while his reference to informers relates to what was prohibited by the Mosaic Law. At another point he observes: "The Evangelists do not mention any formal order of arrest emanating from the Sanhedrin, but only * * the intention of the priests and scribes to seize Jesus by surprise."

Again: Chandler, in considering whether the Jews or Romans were responsible for the crucifixion, says: "The Jews made the complaint, and the Romans

5. "Life of Jesus."
6. Rosadi, p. 124.

ordered and effected the arrest."[7] And he adopts the general apprehension that Roman soldiers assisted in the arrest—a theory which Rosadi declares rests upon no adequate foundation in fact.[8] We are far from convinced that Roman authority effected, or ordered the arrest of Jesus.

If the Jews complained to the Roman authority in Pilate, or otherwise, before the arrest, where is found the evidence of such a proceeding? Only, it seems, through inference from supposed participation in the seizure by Roman soldiers.

But Rosadi rests upon further ground his claim that the arrest was not due to "any order legally given, since," he declares, "the Jews had no power to issue such an order, and the Romans, to whom the right belonged, had no occasion or motive to exercise it"[9]—alluding to the sovereignty of Rome over Palestine. This point will be considered later.

Rosadi holds further, and forcibly, that "the feeling of surprise so strongly manifested in Pilate's demeanor on the appearance of Jesus before him," and his "obstinate resistance to the capital charge"[10] argue convincingly against his having authorized the arrest. He says: "Had the arrest been authorized, arranged, and aided by the Governor, the latter could only have regarded the trial and sentence as two stages of the matter following the arrest, and unless he opposed the arrest he could not oppose its natural consequences." Furthermore, that "the execution of a legal order could never have been mixed up with an ignoble betrayal, agreed upon between the betrayers and the magistrates from whom emanated the order

7. Vol. 2, p. 174.
8. Pp. 116-121.
9. Pp. 120, 116.
10. P. 120.

of arrest."

Wilson, who has written upon the trial of Jesus "From an Historical and Legal Standpoint," while he does not descend to particulars as to who were present at the arrest, says: "The arrest of Jesus was not made by Roman authorities, but by the Jewish"[11] —adopting the language of St. Mark upon this head.

Regarding the arrest, Judge Gaynor, in his address upon "The Trial of Jesus from a Legal Standpoint,"[12] declares it "was not at the instance of any formal accusation, which was a prerequisite to a legal arrest under Jewish law, but was brought about by a conspiracy of the members of the Sanhedrin, his judges; namely, the high priest, the chief priests, elders and scribes."

The Jewish writers are somewhat in conflict upon this subject. Rabbi Hirsch, for instance, author of "The Crucifixion from a Jewish Standpoint," urges the view that the Roman authorities arrested Jesus; basing his claim principally upon the alleged probability of the Romans being desirous of destroying Him because their interests were in so doing, while, he asserts, the Jews had no desire or motive for injuring Him. While Rabbi Drucker in his "Trial of Jesus from Jewish Sources," advances the theory—based, he says, upon oral tradition—that Caiaphas, being under Roman influence, conspired with Judas to betray Jesus, and sent word to Pilate to bring soldiers to Jerusalem to arrest Him in the Temple; which course would precipitate a riot, thus furnishing Pilate with an excuse for seizing and executing Jesus as a rebel, and thereby thwarting the sending of a complaining embassy to Tiberius pursuant to Jesus' pre-

11. P. 35.

12. "Classics of the Bar," (by Sellers, Classic Pub. Co.), p. 25.

vious advice; but which plan miscarried because Jesus, learning of it, escaped to Gethsemane, He being there seized by Caiaphas to be held "until his own plans matured." Dr. Hirsch's reasoning seems far from conclusive, while Rabbi Drucker's theory conveys the impression of a labored effort to relieve the Jewish people from all responsibility for the arrest and crucifixion.

Dr. David Amram, an eminent lawyer and author, in a communication to the present writer upon this subject, states that he is "not aware of any reference in any of the Jewish sources to persons acting as officials under a mandate of a court for the purpose of arresting one who is charged with crime," and knows of no document "similar to our warrants issued for such purpose." He then refers to certain police officers mentioned in the Babylonian Talmud and by Maimonides, and who were municipal guards, "whose business was to protect citizens from harm and danger, and armed horsemen who patrolled the rural districts for the same purpose," and adds: "Although there is no direct evidence, there is every reason to believe that these officials, acting like our modern police, arrested all lawbreakers on sight or upon the charge of some persons who had witnessed the commission of the offence, and brought them before the proper authorities for imprisonment pending trial." He concludes: "The arrest of Jesus as recorded in the gospels seems to have been made in this manner, and certainly without any warrant or order of court. It seems to have been the case of a prosecutor seizing the defendant and haling him before the judge."[13]

13. The author conceives that the phase of the Jewish law of procedure which rested the charge upon the evidence adduced against the accused (hereinafter discussed), may go far to explain the absence of historical evidence of the necessity of making arrest upon specific complaint.

But the prosecutors made use of Judas in making the arrest. It is urged by various writers, not without substantial reason, that the information given them by Judas constituted the evidence of an informer, and was illegal. That his employment "violated the letter and spirit of the Mosaic Law found in Leviticus (19; 16-18), which denounces talebearers." Rosadi, after citing Leviticus, says—speaking of Judas—that it is clear that he hated his Master, that he stood against the blood of his neighbor "by exposing Jesus to the pain of death," that he doubtless exhibited vengeance and displayed rancor against Him. "Hence the use that was made of the treacherous emissary could not have been official, nor could the arrest have been official, closely connected as it was with the betrayal."[14]

The further position is taken, that Judas' instrumentality rendered the arrest illegal, since, if Jesus was and was regarded by those authorities as a criminal, Judas, who had aided and encouraged Christ in the propagation of His faith, was in law an accomplice; that therefore the use and testimony of an accomplice was availed of in the transaction, contrary to the Mosaic Law. In this connection it is said that the biblical injunction referred to, being a moral one, was also a legal rule under the Hebrew basic law,[15] their religion being founded upon law, and their law being conceived as a moral and spiritual obligation. Mendelsohn holds, that the testimony of an accomplice is not permissible by Rabbinic law, and that no man's life nor his liberty, nor his reputation can be endangered by the malice of one who has confessed himself a criminal.[16]

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14. P. 122.
15. Chand., Vol. 1, p. 230.
16. "Crim. Jur. of Ancient Heb.," note 274.

It may be further said regarding the arrest, that if it was intended to apprehend and try Jesus for blasphemy, the evidence consisted of His own confession that He was the Christ—elicited after, not before the arrest; while if for sedition, or insurrection, the claim is made that only the Roman authorities could have been invoked to apprehend Him, as the charge would be one against the sovereignty of Rome.

But we are still in want of authoritative evidence as to the procedure under the Mosaic Law, if blasphemy is regarded as the crucial charge. Wilson observes on this head, that because the arrest was made before the accusation (for blasphemy), it was illegal, since under the Jewish law the arrest before accusation "could only be done in case of apprehended insurrection."[17] But he does not discuss how such "accusation" was legally made under that procedure.

Finally, regarding the process of arrest for crime under the Jewish law: A thorough search through many authorities on the trial of Jesus in particular, and the subject of criminal procedure in general under that system, fails to bring to light any attempt to establish that any legal mandate, writ, or other process whatever on paper, emanating from the Sanhedrin, under or pursuant to which an arrest was effected, existed under the Jewish law at the dawn of the Christian Era,—or, for that matter, at any time. While, as seen, some of the writers declare that in the instance of Jesus' arrest no "legal mandate," or "formal order of arrest emanating from the Sanhedrin," was used, no attempt is made to prove that any such process could properly have been resorted to.

There seems, therefore, to be but one of two conclusions which is tenable, concerning the lawful method of effecting an arrest under that law, namely, that

17. "Tr. of Jes. of Naz.," p. 38.

the informers or prosecutors who made the charge upon which a defendant was tried, and who were themselves witnesses, or furnished witnesses against him, were empowered to apprehend and bring into court the person charged with crime; or that the officers known as *Shoterim*, and whose understood duties embraced that of executing sentence, were also authorized to make an arrest; and that the alleged "municipal guards," as well as the Temple Guard in Jerusalem, also possessed the power of arrest; in all instances following some plan of oral evidence, concerning which no authoritative account is at hand, as to the character of the charge and the identity of the defendant. In this connection it should be borne in mind, that *after* the arrest, the *charge* itself sought to be established by evidence on the trial, *was made by and through the testimony* of the prosecutor, or of his witnesses, and that until the evidence was adduced, it was not known what was the specific charge, to investigate which the arrest itself was made. This phase of the procedure will appear hereinafter.

CHAPTER VI

The Arresting "Band" Acted Under Sanhedrist, Not Roman, Authority—No Roman Soldiers—Version of Arrest in "Passion Play"—Arrest in Night Time Unlawful.

WHO were those that actually made the so-called arrest of Jesus? The evidential basis of this inquiry is of course the Gospel accounts. Saints Matthew, Mark and Luke refer to Judas and a multitude from the chief priests and elders (and scribes, says Mark) as composing the arresting party.[1] John refers to a "band of men and officers from the chief priests and Pharisees," which "band and the captain and officers of the Jews took Jesus."[2] The revised version renders it "band of soldiers." The "swords and staves" were used by those designated as above.

In other words, all these references to persons using or equipped to use force, are persons who were evidently proceeding under the direction of the Sanhedrists, and do not appear to have been acting under the direction or jurisdiction of Roman authority; unless, indeed, the word "band" is properly interpreted to mean a Roman cohort, and that therefore, those making the arrest are to be regarded as having been by necessary inference moving at the behest, or with the implied connivance, of Pilate.

Relying upon St. John's Gospel, Chandler says this "mob" was made up of "Roman soldiers, the

1. Matt., 26; 47. Mark, 14; 43. Luke, 22; 47, 52.
2. John, 18; 3, 12.

Temple guard, and stragglers";[3] Eidersheim, that a "Roman detachment" with servants "from the High-Priest's palace, and other Jewish officers"[4] directed the arrest. Geikie's account[5] is similar, but he includes "some of the chief priests and elders" as "in their excitement" accompanying the party. Father Didon likewise includes a few of the "priestly aristocracy, doctors and elders," and assumes that "the presence of both the legionary and the Temple guard leads us to suppose that the Jewish authorities had concerted with the Roman governor to arrest Jesus."[6] Farrar includes the two supposed military elements of Jews and Romans with a "motley band" of Jews' servants, but mentions officers only "of the Temple watch."[7]

It is thus seen that the supposed presence of Roman soldiers is the basis of the conclusion of the writers that Roman authority participated in arresting Jesus. Rosadi, seemingly with strong reason, vigorously denies that Roman soldiers were present.[8] He declares that St. John's expression—which he says "disagreed with the text of the Synoptics" of the other three Evangelists—"may signify a number of armed men"; that the use of staves aids his interpretation; that a comparison of the words used in the Greek and the Vulgate, and translated "band" and "tribune," when applied to the Roman army, does not necessarily indicate Roman soldiers or officers; that if the assembly had been accompanied by Roman soldiers, the wounding of one of the party by Peter

3. Vol. 1, p. 225.
4. "Life and Times of Jesus the Messiah," Vol. 2, p. 541.
5. "Life and Words of Christ."
6. "Jesus Christ," p. 320.
7. "Life of Christ," pp. 580-1.
8. "Tr. of Jes.," pp. 117-119.

would have resulted in his seizure and punishment. He adds: "And by whom could the services of this centurian have been applied for, and who would have commanded him?" That it must be presumed, on that theory, that the chief priests requested him from Pilate; that such supposition is arbitrary, "because there is not a word in the New Testament of any Roman intervention with such an object, whereas any instance of Roman interference when really occurring is mentioned with no lack of detail"; and that it is absurd, since, on his theory of jurisdiction, the Jews had no power of arrest and inquiry for capital offenses, and "it would have involved a juridical contradiction had Roman aid been lent to an executive act which would have ignored and usurped the exercise of their own judicial power."

Passing by this reference to a conflict of jurisdiction—regarding which we believe Rosadi to be in error as to the non-exercise of any judicial power in criminal cases by the Sanhedrin in Jesus' time,—it is believed that his contention that Roman authority was not in fact invoked in connection with Jesus' arrest, is well founded. It seems of much importance upon this phase of the arrest, that not until within a few years last past has the learning of the ages of the Christian Era found expression in interpretation of the Greek text of St. John's Gospel to mean "Roman soldiers" in this connection—an importance accentuated by the further fact that the theory of Roman intervention seems to be based very largely upon these expressions in that Gospel.

The great drama of the "Passion Play," which has doubtless presented the spectacle of Jesus' arrest with all of fidelity to the facts which long study by high authority could express, may be instanced in this connection, to the point whether Roman soldiers were present at His arrest.

The text of that production as presented at Oberammergau shows conclusively that those authorities believe that the military force attending the Sanhedrists was composed of the "Temple Watch," consisting of "men in armor" armed with clubs and spears. And Selpha is represented as heading the Temple police. Two of the men in armor are found in that presentation as bearing "the flaring light of the braziers," the whole commanded by "Selpha, in steel helmet and steel-embossed leather cuirass," and all "appointed by the Sanhedrin to seize Jesus." That these soldiers were they who "fell backward to the ground" at the words "I am he." That "conspicuous among the watch were Malchus, the high priest's servant, and Balbus," who, "carrying in their hands a small cord," bound Him "at Selpha's command." And when the procession went off to Annas' palace "The Temple Watch formed behind Jesus." After the audience before Annas "Then Selphus the leader of the Watch brought Jesus into the chamber of Caiaphas the High Priest, Balbus and Malchus holding the cords by which His hands were bound." Not until the Prisoner was to be taken from before Pilate to Herod are any other soldiers mentioned, and then the priests and rabbis are found "bringing Jesus with them, led by the soldiers of Herod." The only soldiers mentioned in the play who could have been *Roman* soldiers were those who scourged Jesus, placed the crown of thorns upon His head, and officiated at and in connection with the crucifixion.

If it had been believed by the Evangelists, or any of them, or by any considerable portion of the people of Palestine, that Roman authority had been invoked by the Sanhedrists, or had been in any manner exercised, in effecting the apprehension of Jesus, it seems morally certain that the Gospel record would have disclosed that fact in unmistakable language. This

conclusion seems fortified by the fact that beyond all doubt the Roman procurator consented to and, in legal effect, if not formally, ordered His execution. Pilate condemned and crucified Christ. Was he responsible for having Him brought before him? These thoughts and feelings would have engrossed the public mind and heart after the Crucifixion. Would the popular scorn and hatred of Pilate—intensified into abhorrence by deep sorrow and indignation over that tragic occurrence—would such feelings tend to *exculpate* Pilate at the expense of the Sanhedrists? Would the intense unpopularity of the Scribes and Pharisees cause people or Evangelists, in seeking to fasten guilt upon Caiaphas, to forget Pilate's part in the seizure of Jesus, if in fact they had believed, or had substantial evidence tending to show that, in addition to crucifying, he had been instrumental in arresting the Nazarene? On the contrary, it seems incredible that such belief, or such evidence, if then existent, would not have found expression in, or have been made part of the sacred record.

To the foregoing, may be added other considerations appearing in the course of the present study, which it is believed will tend to confirm the conclusion that Pilate had no part in that midnight trespass, or in its preliminaries.

Christ was taken in the night time. Of this fact there is not the slightest doubt. The narratives of the Evangelists to the effect that those who seized Him bore lanterns and torches to dispel darkness, and that the party carried weapons, indicating the expectation of necessity for their use in capturing Jesus, all make it too plain for controversy that the day had expired and that night-time had arrived long enough to render the roadway dark when the arresting party set out. This fact rendered what was about to be done illegal. The arrest could not lawfully be made

at night.

This position is unequivocally maintained by (among many other commentators) the renowned French advocate and writer, Dupin. He is cited by Chandler as taking this position in his work "Jesus Devant Caiphe et Pilate." This question will be considered in connection with the proceedings at large, occurring on the night of the apprehension and alleged trial of Jesus, dealt with in the next chapter.

CHAPTER VII

Trial at Night Unlawful Under Jewish Law—Jewish Day—Jesus Before Annas, Evangelists' Versions—Annas the Leading Hierarch, His Power, His Deposition, Guilt—No Legal Jurisdiction to Try Jesus—Unlawful Proceedings on Feast-Day or Holiday—Passover Annas' Hall Probably on Zion Hill—Why Pharisees Disappear After Arrest—Enmity of Scribes and Elders.

THE proceedings immediately following the arrest of Jesus, as well as the seizure itself, were illegal for the reason last above stated, namely, because had in the night time.

The Jewish day ended at sundown. The arrest was made, as nearly as can be ascertained from all the records, at or soon after midnight of Nisan 14, or April 7, A. D. 30.

The Mishna declares: "Let a capital offense be tried during the day, but suspend it at night."[1] Mendelsohn lays down the rule: "Criminal cases can be acted upon by the various courts during the day time only, by the Lesser Synedrions from the close of the morning service till noon, and by the Great Synedrion till evening."[2] Maimonides' holding is to the same effect, he giving the peculiar explanation or reason that, "as oral tradition says, the examination of such a (capital) charge is like the diagnosis of a wound—in either case a more thorough and search-

1. Sanhedrin, IV, 1. Chand., "Tr. of Jes.," Vol. 1, p. 255.

2. "Crim. Jur. of Anc. Heb.," Sec. 72, 60.

ing examination can be made by day-light."[3] As we have seen, Dupin is of opinion that the Jewish Law prohibited all proceedings by night. And this rule was recognized in the case of the arrest of Peter and John, as regards proceedings after arrest, and probably also as to the arrest itself; it being related (Acts. 4; 3): "And they laid hands upon them and put them in hold unto the next day: for it was now eventide."

Attention will now be given to what transpired after the arrest of Jesus.

St. John only, of the four Evangelists, says Jesus was bound previously to being taken before any of the alleged authorities. He also stands alone in his account of Jesus having been taken "away to Annas first";[4] Matthew declaring that He was taken "away to Caiaphas the high priest";[5] Mark, that He was taken "away to the high priest";[6] while Luke says they "brought him into the high priest's house."[7] St. Luke had often referred to Annas as high priest. However, that the other Evangelists mention the high priest as the official first applied to, is not regarded as impairing the force of St. John's statement that He was first taken before Annas; since different persons similarly situated might, and probably would vary in the degree of importance attributed to the various phases of these occurrences. Again, as St. John is understood to have written later than the other Evangelists, this phase may have been narrated by him to correct their oversight. St. John adds, concerning Annas: "for he was father in law to Caiaphas, which was the high priest that same year."

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3. Maimonides, "Sanhedrin," III.
4. 18; 12, 13.
5. 26; 57.
6. 14; 53.
7. 22; 54.

In point of fact, Annas was seemingly the most important of all the hierarchs who figure in these proceedings. This Hanan, son of Seth, the Ananus of Josephus and the Annas of the Evangelists, had been the high priest for seven years (A. D. 7-14). More than twenty years before the time in question he had been deposed by the Procurator Valerius Gratus,[8] for imposing and executing capital sentences. His first successor was Ismael Ben Phabi, who was succeeded by Annas' son, Eleazar; to whom succeeded Annas' son-in-law, Joseph Caiaphas.

Farrar declares that Hanan was more guilty of the death of Jesus than any other. "His advanced age, his predominant dignity, his worldly position and influence, as one who stood on the best of terms with the Herods and the Procurators, gave an exceptional weight to his prerogative decisions."[9] Whether Annas was a member of the Sanhedrin at this time is uncertain; but on good authority it is stated that he still held some high position in that body, and he was the dominant spirit in its workings. There seems to be no historical evidence of his restoration to the pontificate after his said deposition.[10]

However, Annas had not, nor had any other one member of the Sanhedrin any legal authority or jurisdiction whatever, to hear and determine charges against Jesus. There must have been the quorum of twenty-three members present in order to confer jurisdiction upon the Great Sanhedrin. "Be not a sole judge, for there is no sole judge but One," says the Mishna.[11]

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8. Rosadi, "Tr. of Jes.," p. 122.
9. "Life of Christ."
10. Josephus, "Antiq." XVIII, Chap. II, 2.
11. Pirke Aboth, IV, 8. We have seen that even the court of lowest grade under Jewish law was constituted of three judges. Mendelsohn, "Crim. Jur. of Anc. Heb.," p. 87.

Again: This proceeding, from the arrest onward, all took place on a day which, under the Hebrew Law, was a feast-day or holiday, and was, for this additional reason, devoid of legality. The Feast of Unleavened Bread, that is, the Passover, had begun, as is made clear by all the Evangelists.[12] And as the legal day began at sunset, and would of course end at sunset next after the night in question, this contention of illegality applies to the appearances before any and all of the individuals, officials, and the alleged Sanhedrin itself, before whom Jesus was taken.

The alleged tribunal or tribunals of the Jews could not lawfully convene on, or on the day preceding a feast day or Jewish Sabbath. "They shall not judge on the eve of the Sabbath, nor on that of any festival," says the Mishna.[13] In the Rabbinic "Betza, or of the Egg,"[14] it is thus laid down: "Court must not be held on the Sabbath, or any holy day." And Rabbi Wise declares: "No court of justice in Israel was permitted to hold sessions on the Sabbath or any of the seven Biblical holidays. In cases of capital crime, no trial could be commenced on Friday or the day previous to any holiday, because it was not lawful either to adjourn such cases longer than over night, or to continue them on the Sabbath or holiday."[15] And Chandler finds the rule to be, that "court could not adjourn for a longer time than a single night. Its proceedings were continuous until final judgment." He declares: "Jesus was tried and exe-

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12. Matt., 26; 18. Mark, 14; 12, 16. Luke, 22; 7, 13, 15. John, 13; 1.

13. Sanhedrin, IV, 1.

14. Chap. V, No. 2.

15. "Martyrdom of Jesus," p. 67. To same effect, Maimonides, "Sanhedrin," II.

cuted between the eve of Thursday, April 6, and the afternoon of Friday, April 7, A. D. 30, being the 14th Nisan, which commenced at sunset, April 6, and lasted until Sunset on April 7."[16]

Some conflict of evidences seems to exist, as to whether the trial was on the first day of the celebration of the Passover, or on the day preceding. But, as we have seen, this is immaterial to the question of illegality.

Further: The proceedings, under the Hebrew Law, were to be recorded by two (or three) scribes; whose records, as will be indicated later on, were to be used on the second trial, or review. But that law prohibited any writing on a Sabbath or a holy day.[17]

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16. "Tr. of Jes.," Vol. 1, p. 265. And Mendelsohn cites from the Mishna to the effect that a capital trial cannot be commenced "on the eve of the Sabbath or of a festival"—citing, Sanh. 32a, 35a. Maimon. H. Sanh. XI, 2, XII, 4.

17. "Lest some writing will have to be done." Beza 36b. Mendelsohn, "Crim. Jur. of Anc. Heb.," note 250. However, Mendelsohn in that note declares: "By Talmudic law there is, properly speaking, no *dies nefasti* with reference to the dispensing of justice. Even on the Sabbath the court might sit in judgment of a criminal cause (Sanh. 35a)," although the Talmud forbids "all action during the Sabbath." He explains that the rule against writing "is not applicable to criminal trials inaugurated the day before, since all the writing will have to be done on the first day of the trial (Tosafoth Sanh. l. c., s. v. *Ligmere*). That no court was held on the Sabbath was owing to the law prohibiting executions on the Sabbath (Sifre II, Sec. 221; Mekhilta Wayakhel Sec. I; Sanh. 35a) or after sunset (Sanh. l. c.; Yer. ib. IV, Sec. 7, p. 22)." Yet Mendelsohn lays down the rule (at p. 113) that no capital trial can be begun "on the eve of a Sabbath or of a festival," and that "another humanitarian law prohibits the pronouncing of a verdict of guilty, on the day the first judiciary vote is taken"—in other words, as we shall see further on in this study, a verdict of

Jesus was made a prisoner in, or in the immediate environments of the Garden of Gethsemane,[18] on the east slope of the valley of the Kedron, which valley skirts the city of Jerusalem on the east side. From thence, where was He first taken, if to the house, or hall, of Annas? This is not known for certainty. Some traditional evidence points to the Mount of Olives close to the Booths or Bazaars, under the "Two Cedars," as its location. That Mount is likewise east of the Kedron and near Gethsemane. Another account places Annas' habitation on the "Hill of Evil Counsel," in the suburb south of Zion Hill.[19] But the generally accepted tradition is that which locates his palace on the northerly, or inner, slope of Mount Zion, and near the palace of Caiaphas. Indeed, there seems to be a quite generally accepted view that Annas' quarters were within the confines of the Palace of Caiaphas. The inclosure of which this palace formed a part was probably square, and entered by an arched passage or vestibule on the western side, while Caiaphas' apartments were probably reached by crossing the square to the eastern side.

Rosadi says: "Caiaphas lived under the same roof with his father-in-law (Annas), but it was necessary to cross the courtyard in order to pass from the residence of the one to that of the other."[20] Farrar says of the high priest's palace: "It seems to have been conjointly occupied by the prime movers in this black iniquity, Annas and his father-in-law, Joseph Caiaphas. They led Him to Annas first."[21]

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guilty rendered on one legal day, can not be followed by execution of sentence on that day—it must be on the next legal day,—or on other than a fast-day.

18. Matt., 26; 36. Mark 14; 32. Luke, 22; 39. John, 18; 1, 2.

19. Chandler, "Tr. of Jes.," Vol. 1, p. 256.

20. "Tr. of Jes.," p. 124.

21. "The Life of Christ," p. 596.

And what elements among the Sanhedrists were represented by those who composed that strange crowd on the way to Annas' hall?

In this connection, let it be asked, why is it that, notwithstanding the hatred of the Pharisees towards Jesus and their eagerness to compass His death, yet that in connection with and after the arrest they seem to disappear in the accounts of subsequent proceedings?

Farrar remarks upon this singular fact, that thenceforth "the Pharisees took so little part in it that their name is not once mentioned in any event connected with the arrest, the trial, the derisions, and the crucifixion. The Pharisees as such disappear; the chief priests and elders take their place. It is, indeed, doubtful whether any of the more distinguished Pharisees were members of the degraded *simulacrum* of authority which in those days still arrogated to itself the title of a Sanhedrin. If we may believe not a few of the indications of the Talmud, that Sanhedrin was little better than a close, irreligious, unpatriotic confederacy of monopolizing and time-serving priests —the Boethusin, the Kahmits, the Phabis, the family of Hanan, mostly of non-Palestinian origin—who were supported by the government, but detested by the people, and of whom this bad conspirator was the very life and soul." Pursuing this inquiry, he asks: "What had aroused the disdainful insouciance of these powerful aristocrats? Morally insignificant—the patrons and adherents of opinions which had so little hold upon the people that Jesus had never directed against them one tithe of the stern denunciation which He had leveled at the Pharisees—they had played but a very minor part in the opposition which had sprung up around the Messiah's steps." And after mentioning as another point of difference between the Pharisees and the Sadducees the discoun-

tenancing by the latter of the "minute and casuistical frivolities of the Oral Law," he explains their virulent enmity against Jesus, based upon "notices of the Talmud," as "mainly due to our Lord's words and acts concerning that House of God which they regarded as their exclusive domain, and, above all, to His second cleansing of the Temple"; although, he adds, "They could not indeed *press* this point in their accusations, because the act was heartily approved; and had they urged it against Him they would have lost all chance of impressing upon Pilate a sense of their unanimity."[22]

In other words, the record discloses hatred by the Pharisees because Christ had denounced their hypocrisy based upon their assumption as sole oracle of the Law. Hatred by the Sadducees because He, in exposing the profane invasion of the Temple and driving unlawful traffic therefrom, had dealt them, as the chief beneficiaries, a blow calculated to paralyze their power in the Sanhedrin and in the market place. Hence the Temple Power it was that was aimed at His capture and persecution.

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22. Id.

CHAPTER VIII

Jesus Before Annas—Annas the Probable Interlocutor—Peter and John—Caiaphas Present—Place of Hearing Not Lawful Courtroom of Sanhedrin—Jesus' Response Justifiable—Secret Examination Unlawful.

JESUS is now before Annas—seemingly pursuant to a conspiracy to subject Him to an inquisition unknown to the law, in a purely private manner and, by using the prestige of the chief hierarch as pretence for a court, to build up some sort of plausible case for presentation before an assembly of Sanhedrists later in the night.

Immediately after stating that Jesus was first brought before Annas, "father-in-law to Caiaphas," St. John significantly adds: "Now Caiaphas was he which gave counsel to the Jews, that it was expedient that one man should die for the people"[1]—thus reverting to the fact that here was a prospective judge who had already solemnly advised the execution of Jesus.

Dr. Hovey, in his Commentary,[2] quotes Westcutt on this head: "The relationship of Caiaphas is not mentioned by any writer except St. John, and yet this relationship alone explains how Caiaphas was able to retain his office by the side of Annas and his sons." And Hovey proceeds: "Luke speaks of the high priesthood of Annas and Caiaphas (3:2), doubtless because Annas was recognized by the peo-

1. 18; 14.
2. On St. John, p. 357.

ple as virtually sharing the priesthood with his son-in-law. It is therefore probable that he had an office in the palace of the high priest, and that his personal influence and control were greater than those of Caiaphas. To him, then, was Jesus *first* led and subjected to an informal examination, with the purpose, no doubt, of ascertaining what would be the best method of procedure in the legal, or at least, formal, process before the Sanhedrin."

Now, St. John states that Peter came to the Palace, "and so did another disciple";[3] this last reference being universally regarded as applying to himself. And his circumstantial account of how Peter was let into the inner court, his thrice denying his Master, etc., all give credence to his narrative as showing that Annas was first applied to, or waited upon by those having Jesus in custody. And while it is uncertain—as it is immaterial in point of law—whether Annas or Caiaphas as "high priest" "asked Jesus of his disciples, and of his doctrine" ("teaching," says the Revised Version), yet it seems not improbable that it was Annas; since he is repeatedly referred to by Luke as being high priest, and he was beyond doubt so regarded by the people, in view of his past official priesthood and his present predominance in the Sanhedrin.

Nor is it definitely known as to precisely where, within the palace or its court, this first examination took place. But that it occurred near the "fire of coals" which had been built where "the servants and the officers were standing" in the process of "warming themselves," is substantially clear. And this is perhaps made clearer by the statement that, both before and after Jesus was sent by Annas "unto Caiaphas the high priest," Peter was present at the fire

3. 18; 15.

"warming himself."[4] Says Dr. Hovey on this head: "The picture is clearly drawn. In the dim court is the charcoal fire, with dark-browed men surrounding it. The light of the coals is just sufficient to reveal the features of the men when they turn to look upon the fire. Peter is there, seemingly indifferent to the trial taking place within sight. John, too, is there, glancing now and then at Peter, but listening chiefly to the examination of Jesus by the high priest."[5] It likewise seems improbable that, if indeed the "high priest" who inquired of Jesus was in fact Caiaphas, the Evangelist should have stated that after Jesus had answered the inquiry, had been insolently struck by the officer, and had made His memorable response, Annas sent Him "unto Caiaphas the high priest."[6] It seems clear that this preliminary inquiry did not take place in any room in Caiaphas' house or palace. And it is quite probable, if not certain, that both Caiaphas and Annas were present. Hovey explains that "though Jesus was really taken to Annas, Caiaphas would, in all probability, be present at the examination; and, thus present, his more youthful years, and the passionateness of his rage against Jesus, would lead him to act the prominent part which is assigned to him"[7]—showing that commentator's belief that Caiaphas conducted the inquiry. On the contrary, Rosadi says: "Annas meanwhile began to question Jesus, Caiaphas, who had appeared shortly before, being present."[8] Again: The fact that "Annas therefore sent him bound unto Caiaphas"[9]

4. John, 18; 18.
5. Com., p. 359.
6. John, 18; 22, 24.
7. Com., p. 361.
8. "Tr. of Jes.," p. 125.
9. John, 18; 24.

would seem to indicate that as the result of the examination in question Jesus—who, according to St. John, was bound when arrested—had been again bound under the order or at the suggestion of Annas; which theory would also suggest Annas as the interrogator, and that he desired to promote the appearance of guilt of Jesus by sending Him bound, to Caiaphas. Dr. Hovey finds that Jesus had been "relieved of his fetters"[10] while this inquiry was on. And Rosadi asserts that at the moment when the cock crew and Peter went out and wept, "Jesus, strongly bound, passed through the courtyard and was taken from Annas to Caiaphas, who intended to re-examine Him while the members of the Sanhedrin were being summoned for another meeting."[11]

The point involved in these details, as to where and before whom this so-called preliminary inquiry was had is, that not the Sanhedrin as the forum, and not any meeting-place of that body as the locus, was resorted to, but that this presumptuous and unlawful inquiry was had in a private and preliminary way before one, or two of the arch conspirators who, while composing part of the Sanhedrin membership, were thus arbitrarily usurping judicial power in an attempt to wrest from Jesus a self-condemnation preparatory to a later proceeding before the Sanhedrin; and that, as Jesus was again bound before being sent into Caiaphas' hall, where the Sanhedrin was presumably to meet, that inquiry was actually made the occasion or excuse for the pre-determination of guiltiness.

But, whether this first appearance was in fact before Annas, or before Caiaphas, this, in substance, occurred: To the inquiry as to Jesus' disciples and His teaching, He answered that He had spoken and

10. Com., p. 361.
11. "Tr. of Jes.," p. 125.

taught openly, in the synagogues and the Temple, "where all the Jews come together; and in secret spake I nothing. Why askest thou me? ask them that have heard me."[12]

This response was strictly legal and justifiable. Christ here, as elsewhere, exhibited an insight into law and procedure which proves Him of profound legal comprehension. He was correct upon the law, both because these inquisitors had no legal right to seek to draw from Him statements by way of admission of guilt; and because, if He had been guilty there was proof of guilt in His public utterances,—indeed, those "doctrines," and as to who were His disciples, could and would be provable in due course of justice by those who heard Him in His daily rounds and knew the company He kept.

But Jewish law forbade this inquisition, and denounced it as unlawful. Says Salvador, a great writer on the Jewish Law, in his "Institutions of Moses:" "A principal perpetually reproduced in the Hebrew scriptures relates to the two conditions of publicity and liberty. An accused man was never subjected to private or secret examination, lest, in his perplexity, he furnish damaging testimony against himself."[13] Here, as in all responsible systems of law, is found the sanction of the common law. Indeed, the Hebrew Commonwealth—where was the repository of those ancient principles which have been widely regarded as the origin of republican government—would be wanting in a most vital aspect, were not such a safeguard as Salvador exposes found in the Mosaic law. In a word: Private preliminary examinations of persons accused of crime were unwarranted by that law.

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12. John, 18; 20.

13. "Institutions of Moses," pp. 365-6.

According to Mendelsohn,[14] the only preliminary examination, private or public, concerning crime, was the "inquest" into the circumstances of an alleged murder; in which process, not the defendant, but the evidence as shown by the victim's condition, and attendant circumstances, was examined into; this for the purpose of determining the intent of the accused —according to Maimonides and others. Mendelsohn, citing Talmudic authority, declares the rule of evidence as to self-incrimination: "Not only is self-condemnation never extorted from the defendant by means of torture, but no attempt is ever made to lead him on to self-incrimination. Moreover, a voluntary confession on his part is not admitted in evidence, and therefore not competent to convict him, unless a legal number of witnesses minutely corroborate his self-accusation. No man is competent to convict himself, says the Talmud: 'he is his own kin,' and we have just seen that kinfolks are not admissible as witnesses."[15]

Under the Hebrew laws above referred to, Jesus continued to assert His rights when He declared to the officer who smote Him, that he should bear witness "of the evil" if He had spoken evil, as also when He inquired: "But if well, why smitest thou me?"[16]

But this invocation of the law by Jesus had its effect; since those who were seeking His condemnation now tried to adduce evidence against Him.

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14. "Crim. Jur. of Anc. Heb.," p. 71.
15. Id., p. 133.
16. John, 18; 23.

CHAPTER IX

Right of Sanhedrin to Try Capital Offense—Great Difficulty of Question—How Affected by Roman Sovereignty—Prevailing and Probably Correct View is Affirmative, Subject to Roman Execution of Sentence—Large Reservation of Jewish Jurisdiction Under Roman Sovereignty —Roman Criminal Jurisdiction in Provinces— Lieutenants or Procurators—The Imperium, Jus Gladii—Opposite View—Roman "Force Converted into Right"—Political Situation in Judea "Complicated and Anomalous."

BEFORE proceeding to consider what next occurred concerning the trial of Jesus, and laying aside the question of illegality of the proceedings by night, further than to observe that the concensus of view seems to be that what is now about to occur, if not that which has already been narrated as having taken place before Annas or Caiaphas, or both, transpired between two and three o'clock in the morning,—and assuming further, that some assembly now met which was composed of a quorum of the Sanhedrin—let us consider the question, Did the Great Sanhedrin have jurisdiction to try capital offences in the time of Christ?

This question, involving the relations between the Roman and Judean states, as well as the actual legal posture of the Sanhedrin in Israel at this time, is one of great difficulty. It seems safe to assume, however, that that body still existed in substantially the same form as characterized it in preceding generations; that its general powers and jurisdiction pertaining to

local and internal affairs were unimpaired, so far as regards Roman interference; and that their curtailment in consequence of Roman sovereignty went only so far as the exercise of that sovereignty, and the attendant Roman interests, demanded. That the policy of Roman administration comprehended, and was in general satisfied with Judean subservience to that sovereignty, and to the collection of the revenues which maintained the Roman supremacy and administration; that under that policy the body of the Jewish laws was left substantially intact, and their administration and execution remained in the hands of those Jewish officials who, composing the appropriate Sanhedran authority, had normally exercised those functions before the Roman invasion and conquest; but that Roman sovereignty embraced, in theory and practice, the final judicial determination by Roman administrators, of the question of life and death.

Now, whether this vital question of the *jus gladii* was so dealt with under Roman administration as to permit the Great Sanhedrin, in cases of trial of capital offenses, to apprehend, try, and pronounce sentence against the accused, subject to confirmation of sentence and execution thereof by the Roman authority, is the vexed and the crucial point involved in the proceedings hereinafter considered in connection with the so-called trials and the execution of Jesus.

That the biblical record,[1] and the Jewish writings[2]

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1. John, 18; 28, 31: "It is not lawful for us to put any man to death." 19; 10.

2. Salvador, "History of the Institutions of Moses," tom. IV. liv. 4, Ch. III. Josephus, "Wars of the Jews," II, 8, 1. Talmud: "Forty years before the destruction of the temple the judgment of capital cases was taken away from

bearing upon this phase of the subject are clear to the point that the Jews disclaimed the jurisdiction and power to *execute* sentence of death, is beyond controversy or doubt—they all recognize that this right had been taken away by the Romans, if, indeed, it had not been impaired as the result of previous invasions of Palestine by other nations. But the point as to the Jewish right to initiate proceedings and try capital offenses, subject, in case of conviction, to confirmation and execution of sentence by the Roman authority, is resolved in the affirmative by Salvador, Renan and other able writers and commentators. And this view seems to be the prevailing one among those who may probably be regarded as constituting the array of leading authors in the biblical and historical fields. The tenability of this position is strengthened by what seems to be a universally admitted fact—i. e., that the Jews, by reason of their prestige as a nation, and their bold and persistent insistence upon their rights, were made the subject of special and marked deference by the dominant Roman power; this policy resulting in a larger reservation of power and jurisdiction to the Jewish subjects, in administration of the laws, than ordinarily obtained under Roman sovereignty in the provinces. Especially does this theory find lodgment under that sovereignty in Judea, in matters of religion, that is to say, religion under the Jewish Theocracy, which involved much of statecraft.

Among other high authorities upon this question, Colquhoon,[3] who seems to have gone exhaustively

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Israel." Sanh. I, 1. (18a) and VII., 2 (24b). Rabbi Hirsch, "The Crucifixion Viewed from a Jewish Standpoint," p. 52.

3. "Summary of the Roman Civil Law, Illustrated by Commentaries on, and Parallels from, the Mosaic, Canon,

into a study of the Roman systems of municipal and political law, and whose work is believed to be a monument of intelligent research,—in treating of Roman jurisdiction in criminal cases in the provinces, says in substance: There were lieutenants under the Empire, as was the case under the Republic; which officials combined in their sole persons all the different attributes which were divided among the many and various authorities in the city of Rome. The *Procurator Caesaris* possessed, by virtue of his office, no criminal jurisdiction, or if he did, it was only when he filled the place of acting lieutenant, and certain penal matters had been delegated to him in such capacity, "as was the case with Pilate in Judea."[4] He adds, that the relation of the Jewish High Priest to the Roman Magistrate in Judea is a point which "has never been clearly explained, and will ever remain a difficult question of criminal competency, and of conflicting jurisdiction"; that the High Priest, assisted by his synedrium, appears to have had competency in offenses against religion, with the *jus apprehensioni* (right of arrest), and the power of trial and condemnation to death, which, however, availed them nothing if the Roman Procurator, in whom the *imperium* and *jurisdictio* really resided, refused to confirm or execute the sentence. (He cites Sts. Matthew and John, and Josephus). He declares that appeals in criminal matters lay to the Emperor "from all the provinces, in addition to which the Lieutenants in the Provinces often referred doubtful cases to the Capital for the Imperial decision." That in the Provinces, even in Italy, the pow-

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Mohammedan, English, and Foreign Laws," by Patrick Mac Chombaich de Colquhoon (4 vols., London; V. & R. Stevens & Sons, 1851). Sec. 2394.

4. Id., Sec. 2394.

er of capital execution remained in the hands of the imperial Lieutenants. He concludes that "it is impossible to come to a satisfactory conclusion as to the exact nature of criminal jurisdiction outside of Rome"; but declares it is clear that the municipal colonial authorities possessed a certain jurisdiction; that capital matters must, however, be brought before some authority at Rome. That in the Provinces the Lieutenants were invested by the people with a complete jurisdiction; that "criminal jurisdiction was never, under the Roman system, a necessary incident to office, and was never taken as understood in the *imperium;* but was always considered as an extraordinary addition, and hence was styled *merum imperium, jus gladii,* and *potestas,* in its more restricted sense, and required to be especially and expressly appended to an office, either by a *lex,* senatus consultum, or constitutio, and for this reason was incapable of being conferred, like the jurisdictio, by mandate."[5] This term "mandate" meant general instructions, emanating from the imperial authority to individual officers, and which were communicated only to them; being one of the *constitutions* which appeared as a new source of power in the development of the Roman Empire.

On the other hand, many writers conclude that the Sanhedrin had, in the time of Christ, been deprived of some of its important judicial attributes, including the right to try criminal cases; that only minor crimes and religious offenses not capital were now within its cognizance. The Jews' contention is, as voiced in the Talmud, that "forty years before the destruction of the Temple the judgment of capital causes was taken away from Israel."[6] Among those writers

5. Id., Sec. 2392, 2393.
6. See, note 2.

holding this view are Rosadi[7] and Dupin,[8] who declare that the Jews had been shorn of the right, by virtue of the Roman conquest, to try capital cases. From the strictly legal point of view this contention stands approved in theory, as regards criminal procedure in general, and which ascribes to any judicial tribunal the power of execution of sentence for any crime to try which it has jurisdiction. And if the weight of that theory were strong enough to overcome the evidence which tends to prove a separation, or division in point of jurisdiction, as between the functions of trial and sentence, and execution of sentence, in Judea at that time, this vital question would be thereby resolved against the right of trial in capital cases by the Sanhedrin.

Rosadi, dealing with the question of Roman administration in Judea, reasons thus: That after the kingdom bestowed by the Caesars upon Herod the Great had been divided between his three sons, and that district embracing Judea, which went to Archelaus, had been taken possession of by Quirinus—monarchy being thereby abolished—"part of the country being placed under the immediate administration of Rome, while the internal government of the remainder, so far as compatible with Roman sway, was left to the Sanhedrin at Jerusalem," the Roman administration was entrusted to a procurator subordinate to the Lieutenant-Governor of Syria, Floccus Pomponius; the actual government in Judea being exercised in his name by the procurator, Pontius Pilate. That this character of government existed at the time in question, and until A. D. 41. That the Roman civil institutions, being framed "in view of the exigencies of war," therefore "the right of conquest

7. "Tr. of Jes.," pp. 136, 139.
8. "Jesus Devant Caiphe et Pilate."

must produce the greatest and more indisputable results of force converted into right." And, speaking of the provinces: "Rome left to the populations of these lands the internal government, the policing of the towns, and judicial power, but only in minor cases, retaining for herself the power to make laws and to apply them in cases of life and death." That, the Syrian tribute being regarded as land revenues due the proprietor, hence "the governing idea of the provincial institution was primarily financial in its object, and it mattered little that all the provinces were not governed in the same manner or subject to the same burdens." But that still, this system of revenue-production as the chief objective did not imply "abdication or delegation of the supreme exercise of public law, the first and most zealously guarded function of which is the administration of justice." That the right of life and death is the principal attribute of Roman sovereignty, and was never relinquished. From all which, Rosadi concludes it "not likely that a Roman province like Syria, at the time of which we write, should have the power to try capital offenses and pronounce sentence of death, even if leaving the execution of the sentence subject to the assent of the representative of Rome."[9]

That able writer reasons further, that had such power of trial and sentence in capital cases been left to the local province, Rome "would only have placed in the provinces mere revenue officials and procurators attached to the Imperial treasury administration; while in fact in addition to those she appointed to every province a governor invested with ample powers exercisable under explicit delegation "in the small provincial districts where no governor resided." That fuller knowledge of those powers shows

9. "Tr. of Jes.," pp. 132-136.

"that the exercise of supreme judicial power not only in its final executive phase, but also in its fundamental and most important jurisdiction, was reserved to those magistrates." That the provincial governor had the *jus gladii*, or right of capital punishment, and, according to the Justinian text, tried all cases which in Rome fell under the jurisdiction of officials who tried capital offenses. From which he again concludes: "It is clear, therefore, that the president of the province possessed the exclusive and inalienable power of trying capital offenses." He adds: That the procurator in a smaller province, acting as "substitute of the governor in all matters, including judicial cases, with the rank and title of vice-president," exercised judicial functions only by virtue of that title; and he cites Guiacius as the most authoritative among the ancient commentators of the Justinian text, as follows: "On the procurator of Caesar is conferred jurisdiction in pecuniary fiscal cases, but not in criminal cases, unless when acting as vice-president—like Pontius Pilate, who was procurator of Caesar and Vice-President of Syria." Here Rosadi sums up on his theory of Roman jurisdiction: "Thus the sole authority in Judea that could try Jesus, arrest and examine Him, and render Him amenable to the consequences of His alleged offense and of a condemnation, was that of the Procurator and Vice-President, Pontius Pilate, but certainly not Annas nor Caiaphas, nor the whole Sanhedrin nor any other Jewish authority. The common opinion to the contrary—which reduces the Roman authority, represented by Vice-President, to the mere granting or refusing of assent to the execution of capital sentences pronounced by Jewish judges—is opposed to historic truth and the provisions of the law."[10]

10. Id., pp. 136-139.

We have gone thus extensively into Rosadi's postulate and his evidential authorities, to point out that he nowhere brings forward any positive evidence which establishes that the Sanhedrin was *in fact* deprived of its ancient faculty of trial of capital offenses. He seeks to prove this solely through inferences derived from the conferring of the *jus gladii* upon the Procurator as Vice-President. In other words, because that official, under the Roman provincial system in general, theoretically *possessed* that right, therefore he invariably *exercised* an intermediate right (that of trial) involved in the *jus gladii;* and this, even though its non-exercise left the Roman sovereignty in possession of "the supreme exercise of public law"[11] in that ultimate power of disposal which determined, in the *execution* of capital sentence, the question of life and death.

It does not appear to the writer that Rosadi's position, which he admits is "contrary to the common opinion," and against which for nineteen centuries "orthodox and heterodox criticism" has run, establishes that the contrary view "is opposed to historic truth and the provisions of the law." We believe there is much in Hebrew and Roman history, as well as in the Evangelical accounts of the so-called trial of Jesus, going to establish that the Sanhedrin had not been deprived of the right to try capital cases, subject to confirmation and execution of sentence by the Roman authority.

That the general rule of Roman provincial administration, contended for by Dupin, Rosadi and others, probably did not apply to Judea, is further evidenced by the views of Rawlinson, who refers to the political situation in that province as "complicated and anomalous, undergoing frequent changes, but

11. Id., p. 136.

retaining through them all certain peculiarities which made that country unique among the dependencies of Rome. Having passed under Roman rule with the consent and by the assistance of a large party of its inhabitants, it was allowed to maintain for awhile a sort of semi-independence. A mixture of Roman with native power resulted from this cause and a complication in a political status difficult to be thoroughly understood by one not native and contemporary."

Schurer says: "It may be assumed that the administration of the civil law was wholly in the hands of the Sanhedrin and native local magistrates; Jewish courts decided according to Jewish law. But even in the criminal law this was almost invariably the case, only with this exception, that death sentences required to be confirmed by the Roman procurator. In such cases, the procurator decided, if he pleased, according to Jewish law."[12]

Greenidge says substantially the same of Roman administration in Sicily; and that "Roman governors were empowered to apply the adjective law (procedure) of Rome to the substantive law of the Province."[13] That Pilate's course in the instant case should have been "the criminal procedure of a capital case tried at Rome, during the reign of Tiberius Caesar" is the conclusion of Chandler.[14]

12. "The Jewish People in the Time of Jesus Christ."
13. "The Legal Procedure of Cicero's Time," p. 118.
14. "Tr. of Jes.," Vol. 2, p. 31.

CHAPTER X

Christ Before the Sanhedrists—Hall of Hewn Stone in Temple, Not Caiaphas' Palace, the Legal Meeting Place—No Substantial Evidence of any Hearing in Temple—Sanhedrists Disqualified as Jesus' Judges—Mosaic Code—Corrupt Jewish Priesthood.

THE palace of Caiaphas was not the legal meeting place of the Great Sanhedrin in Jerusalem. The *Lishkhath haggazith* (Hall of Hewn Stone), in an apartment of the Temple on Mount Moriah, the eastern hill of the city, being the official locus of that assembly. Mendelsohn declares that outside of this hall no proceeding involving life and death could legally occur.[1] And Deuteronomy (17;10) lays down the Mosaic injunction: "Then shalt thou do according to the tenor of the sentence, which they may point out to thee from the place which the Lord may choose." And what is said to be the most ancient record of the Sanhedrin (2 Chron. 19;8) declares: "Moreover in Jerusalem did Jehosaphat set of the Levites and the priests, and of the heads of the fathers' houses of Israel, for the judgment of the Lord, and for controversies."

Mendelsohn, in dwelling upon this subject, and citing copiously from the Talmud, represents the rabbinic argument concerning the locality of the sessions of the Sanhedrin to be, that only "the spot chosen by

1. "Criminal Jur. of Anc. Hebrews," p. 98. Tosefta Sanh. VII, Sec. 1; Sanh. 88b.

God,—a locality connected with the great temple" could legally be used to try capital cases and inflict capital punishment; that the Sanhedrin must be "domiciled at the sacred place;" that "about the beginning of this era" and because of Roman interference, that body removed to Bethany, thence to various other places, from whence it "asserted its authority over all the Israelites." But that it was only the *jus gladii* that the Talmud considered inseparable from the temple; "for other purposes the place is immaterial." That the Sanhedrin continued to be the legislative body of the Jews "for several centuries after the total destruction of the temple."[2]

There seems to be no substantial evidence that Jesus was led into the Hall or Council Chamber of the Temple for trial; but He was doubtless examined before Caiaphas and such other Sanhedrists as were present in his palace, and was taken thence before Pilate.

Then, assuming the fact to be that the Sanhedrin was domiciled in Jerusalem at the time of the Crucifixion, and that Mendelsohn's suggestion of its removal from thence relates to a subsequent date, still, there having been no convening of that body in the Temple on the night in question, and supposing that the purpose was to condemn for a capital crime, there was no jurisdiction, and no legal judgment could have been rendered for this additional reason, even though a quorum is assumed to have assembled in Caiaphas' palace.

Still another point is seriously made against the competency of the Sanhedrists who essayed to adjudge against Jesus, namely, that they as judges were legally disqualified. Says Mendelsohn: "The robe of the unfairly elected judge is to be respected no

2. Id., notes 224-5.

more than the blanket of the ass."[3] Again: "As Moses sat, * * * so also must every judge act from a sense of duty only."[4] "Nor must there be on the judicial bench either a relation, or a particular friend, or an enemy of either the accused or of the accuser."[5] Benny says on this head: "Nor under any circumstances was a man known to be at enmity with the accused person permitted to occupy a position among his judges."[6]

Says Rabbi Wise, the chief priests were "the tools of the Roman soldiers who held Judea and Samaria in subjection. Like the high priest, they were appointed to and removed from office by the Roman Governor of the country, either directly or indirectly. They purchased their commissions for high prices, and like all Roman appointees, used them for mercenary purposes. * * * Although there was, here and there, a good, pious and patriotic man among them, he was an exception. As a general thing, and under the rule of Pilate, especially, they were the corrupt tools of a military despotism which Rome imposed upon enslaved Palestine."[7]

The Talmud is quoted as declaring the high priests of Christ's time a "plague" of a family, and accursed, naming various priestly families. "They are high priests themselves, their sons are treasurers, their sons-in-law are commanders, and their servants strike

3. "Hebrew Maxims and Rules," p. 182. "Crim. Jur. of Anc. Heb.," p. 95, note 212; Yer. Biccurim III. Sec. 3, p. 65d.

4. "Crim. Jur. of Anc. Heb.," p. 102, note 231; "Hebr. Max. and Rules," p. 177. Nedarim 37a; Bekhorath 29a. Deut. 4; 5.

5. "Crim. Jur. of Anc. Heb.," p. 108, note 210. Sanh. 27b.

6. "Crim. Code of Jews," p. 37.

7. "Martyrdom of Jesus."

the people with staves." The "porch of the sanctuary" cried out four times—twice to hurl them out as pollutions, twice (in irony) to bring in other groveling men to take their places.[8] And these high priests were the controlling spirits in the Sanhedrin of Christ's time.

We have seen how deep was the enmity of Annas and Caiaphas against Jesus, and how Caiaphas had previously counselled, in effect, that Jesus ought to die that the nation might live. The Sanhedrin, thus constituted, could not but fail for incompetency as a tribunal to try and judge Him.

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8. "Talmud, Pesachim, or the Passover," fol. 57.

CHAPTER XI

Four Essential Rules of Hebrew Procedure—Testimony Constituted Formal Charge—Whether Written Charge Necessary—No Admission of Guilt—"False Witnesses," Effect of—Sedition—Desecration or Destruction of Temple—Self Condemnatory Evidence Unlawful—Necessary Witnesses—Hebrew Procedure—The "Alibi"—Rules of Evidence.

CHRIST is now facing his accusers, after the interrogations in Annas' room; and, as is understood, in Caiaphas' palace:

"The chief priests and the whole council sought false witness against Jesus, that they might put him to death."[1]

But what was the specific charge against Him? This seems to be determinable only from what the witnesses stated; which conclusion is based upon what is regarded by the authorities as the regular procedure in criminal cases under the Mosaic law. Let us see.

"The entire criminal procedure of the Mosaic Code rests," says Salvador, "upon four rules: certainty in the indictment; publicity in the discussions; full freedom granted to the accused; and assurance given against all danger of errors of testimony."[2] And says Eidersheim: "The Sanhedrin did not and could not originate charges; it only investigated those brought before it."[3]

1. Mark, 14; 55. Matt., 26; 59.
2. "Institutions of Moses," p. 365.
3. "Life and Times of Jesus the Messiah," Vol. 1, p. 309.

But it seems reasonably certain that under the Hebrew procedure there was no formal indictment, and that the testimony of the prosecutors identified and defined the charge. Says Innes in his "Trial of Jesus Christ": "Until they spoke, and spoke in the public assembly, the prisoner was scarcely an accused man. When he spoke, and the evidence of the two agreed together, it formed the legal charge, libel, or indictment, as well as the evidence of its truth."

However, while neither the Mishna (the massive traditional or Oral Jewish Law) nor the Gemara (the Rabbinical exposition of the meaning of the Mishna) mentions written indictments among the ancient Hebrews, yet "the Jewish encyclopedia" declares that accusations were probably in writing, says Chandler.[4] And Salvador seems to refer to writings when he speaks to this point: "The papers in the case were read, and the accusing witnesses were then called."[5] Chandler concludes: "From the whole context of the Scriptures, however, we are led to believe that only oral charges were preferred against Jesus."

Thus, while it seems reasonably certain that no written charge was in fact lodged against Jesus, the question whether under the Hebrew procedure such a formality was required in the time of Christ, is an open one.

We have seen that inquiry (which was illegal) was made before Annas, to lead Jesus to commit Himself as to the character of His disciples and doctrine.[6] The purpose may have been, and probably was, to lay the foundation of a charge upon which to try Him later before the Sanhedrin. If so, the attempt failed. The nature of the testimony elicited before

4. "Tr. of Jes.," Vol. 1, p. 254.
5. "Institutions of Moses."
6. John, 18; 19, 20.

the alleged meeting of the Sanhedrin is therefore our only guide as to what crime was sought to be proven against Him.

As to false witness, "they found it not," says St. Matthew, "though many false witnesses came." But "came two, and said, This man said, I am able to destroy the temple of God, and to build it in three days."[7] While St. Mark (the only other evangelist who refers to the procedure before the Sanhedrin at the night meeting) says that many false witnesses "agreed not together," but that certain of them said "We heard him say, I will destroy this temple that is made with hands, and in three days I will build another made without hands. And not even so did their witness agree together."[8]

It is thus seen that, while according to St. Matthew two witnesses evidently did agree in testifying that Jesus declared His *ability* to destroy and to rebuild in three days the Temple, yet that certain false witnesses mentioned by St. Mark declared,—while not essentially agreeing therein—that He said he *would* destroy it and in three days build another "made without hands." And thus one set of witnesses in effect destroyed the case sought to be made by the other.

The intent of the prosecutors here seems to have been, to establish some character of charge of sedition, or of treason against the state, by adducing evidence of a verbal attack in the nature of blasphemy against the Temple.

The conclusion, based upon these testimonies of witnesses, is obvious, and was so considered by the Sanhedrists, that no case regarding Jesus' declarations concerning the Temple, and amounting to dese-

7. 26; 59, 60.
8. 14; 56-59.

cration, or destruction, of that House of God, or of sedition, had been legally made out.

But the Sanhedrists, foiled in attempting to prove any case against Christ, again resort to gross violation of the rules of procedure and of evidence, by seeking to evoke from Himself condemnatory proof, when the chief priest "stood up and said unto him, answerest thou nothing? What is it that these witness against thee?" But Jesus "held his peace, and answered nothing."[9]

Here the priest's inquiry seems to involve two implications: The first, that the testimony was sufficient in general to put Jesus upon His defense. Second, that the Sanhedrists assumed the proofs to be sufficient to show *some* specific violation of the Mosaic law, although they had not the temerity to attempt to point it out; and that, perhaps, He would recognize a sufficiency of evidence as establishing some specific wrongful act. In any event, they were but imposing upon His legal right to remain silent in view of false and inconclusive testimony.

The legal aspects of a confession by a defendant, and the competency of such evidence under the Hebrew law, will be discussed later on. Let us now consider the Mosaic rules of evidence, as regards the amount of testimony required in order to convict, as well as the order in which evidence was introduced.

First, there must be at least two witnesses, who agree in all substantial respects as to the act constituting the charge, in order to warrant conviction; this, whatever may have been the character of the charge. The Mosaic law as laid down in Deuteronomy (19;15, 17;6) was clear upon this point. All ancient codes seem to have recognized this princi-

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9. Mark, 14; 60, 61. Matt., 26; 62, 63.

ple.[10] Says St. Paul to the Corinthians:

"In the mouth of two or three witnesses shall every word be established." (13;1). And in order to impress the witnesses with the responsibility resting upon them, and to seek to deter them from committing perjury, the same law required them, in case of conviction, to be the first to carry out the capital sentence. (Deut. 17;7).

The order of Hebrew procedure in introducing evidence seems to have been as follows: The examination of witnesses on behalf of the Commonwealth; followed by those for the defense.[11] And furthermore, the rules governing the weighing and comparing of evidence were entirely different from those obtaining under the common law of England and America. The Mosaic system on this subject was in fact unique. The judges are said to have refrained from weighing opposing witnesses, no matter how widely they may have differed as to the facts. Unless fraud was manifest in connection with some of the testimony, so that a question of good faith arose concerning witnesses, the judges did not undertake to decide as to what was the effect of the whole testimony, but they considered, and the law required them to hold, that there was no evidence,[12] and acquittal of the de-

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10. Rosadi, "Tr. of Jes.," pp. 177, 178. Mendelsohn, "Crim. Jur. of Anc. Heb.," p. 115, cites the Talmud: Sifre II., Sec. 148; Kethuboth, 87 b. The Roman law was to same effect. L. 20, Dig. De questionibus xlviii. 18. Montesquieu boasts of the same rule under French law. "Spirit of the Laws," L. XII, C. III.

11. Mendeloshn, "Crim. Jur. of Anc. Heb.," p. 132. Chandler, "Tr. of Jes.," Vol. 1, p. 161.

12. "If one witness contradict another, the testimony is not accepted." Mishna, "Sanhedrin," C. V. 2. Maimonides, "Sanh.," Chap. XX. "Jewish Encyc.," vol. V, pp. 279, 280. Chand., "Tr. of Jesus."

fendant followed. In other words, any material contradiction resulted in acquittal.

In this immediate connection, it may be noted that certain formal questions were put to witnesses in criminal cases under that system. First the "Hakiroth,"—questions touching the identity of the prisoner and the elements of time and place. Second, the "Bedikoth,"—a rigid examination and cross-examination concerning the transaction, and the defendant's connection therewith. From this it is seen that the range of interrogation of witnesses embraced so many phases of proof, each requiring unanimity of at least two witnesses, and requiring also the absence of opposing testimony, as to render the system itself one which would protect a defendant, with almost moral certainty, against unwarranted, or unlawful, conviction. "Any material disagreement between the two or more witnesses required by law in answer to any of the formal questions entitled the defendant to an acquittal," says Chandler.[13]

But there was one, and only one mode of impeaching witnesses under the Hebrew law,—that of the *alibi;* which process pertained to the proofs arising upon the formal questions concerning time and place. For instance: The defendant might show by a "set" of witnesses, that those who testified that the crime was committed at a certain place and hour, were themselves elsewhere at that time. They were thus impeached, or confuted, their evidence was rejected, they became amenable to punishment for perjury, and the defendant was acquitted.[14] Further: If the testimony of the impeached witnesses was sufficient to convict the defendant, and the confuting testimony

13. "Tr. of Jes.," Vol. 1, pp. 138-140, 160, 161.

14. Mendelsohn, "Crim. Jur. of Anc. Heb.," pp. 54, 55, 129, notes 301-2.

was produced after verdict was pronounced (as it might have been under a further, or reviewing trial, as will be seen hereafter), then they became subject to "the penalty which their testimony, had they not been confuted, would inflict on the alleged criminal," says Mendelsohn. But still further: According to the "Jewish Encyclopedia," the opposite party (the state) might prove an alibi upon the defendant's witnesses, and thus render that process ineffectual; since, in such circumstances, the judges would, if no fraud appeared, hold that there was no evidence upon that head, and an acquittal followed.

But if the defendant failed in the alibi against prosecuting witnesses as to the Hakiroth, and if the Bedikoth developed consistent evidence, etc., and was oral, then there was legal evidence to "lay before the Sanhedrin," says Chandler,[15] citing Hebrew authorities.

The reference to oral, or verbal, evidence, leads us to another observation upon the Mosaic law of evidence, namely: That while hearsay evidence was incompetent under that code, as it is under the common law of England and America, yet both documentary and circumstantial evidence—admissible under the latter system—was excluded under the Hebrew practice.[16]

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15. "Tr. of Jes.," Vol. 1, p. 162.

16. Mendelsohn, "Cr. Jur. of Anc. Heb.," p. 124. Sanh. 37a. Maimonides H. Sanh. XII. 3.

CHAPTER XII

No Prosecuting Attorney, or Lawyers, Under Hebrew Law—Judges Legal Defenders of Accused—Mooted Question of the "Baal-Rib"—The "Orekh din" as "Counsellor"—Discussion of Case by Judges—Disciples in Sanhedrin—Balloting—Unanimous Verdict for Conviction Invalid—Majority of Two Necessary.

WHILE dwelling upon the subject of Hebrew procedure, another phase thereof demands consideration.

There was no such officer as a prosecuting attorney known to Hebrew law. That function devolved chiefly upon the prosecuting witnesses,[1] and in some degree upon the judges.[2] The conduct of the prisoner's defence under that system devolved upon a member or members of the Sanhedrin appointed for that purpose. The Talmud (Sanhedr. 40, a) and numerous other authorities establish this proposition. The officials so appointed were bound to interpose every defence and resort to

1. Mendelsohn, "Crim. Jur. of Anc. Heb.," pp. 110, 133, 140. Chandler, "Tr. of Jes.," Vol. 1, pp. 113, 125, 126.

2. Id., pp. 140-1. Mendelsohn there says: "The court is the representative neither of the state nor of the prisoner, but of the majesty of justice which represents both the state and the prisoner; and justice being both blind and impartial, no counsel or advocate is allowed on either side." Note 327, citing Mekhilta Kaspa, Sec. 20. He says, however (p. 141): "The deliberations [of the Sanhedrin, after the evidence is closed] must be opened with an argument for the defense, and by one of the younger judges," citing Sifre I., Sec. 12; Sanhedrin, 32a, 40a.

all available expedients under that procedure that tended to secure an acquittal. The fact that this function was dischargeable by a committee of judges, taken in connection with the apparent absence, in the Hebrew procedure, of such an officer or *attache* as the modern lawyer, renders it reasonably certain that there was no attorney at law to defend criminals under that system, either officially or through personal retainer by the defendant, or under assignment to the defence by the court itself.

However, some speculation has arisen as to the existence of such a professional defender under the Hebrew law. Keim, in his "Jesus of Nazara" says, speaking of Jesus' trial: "The accused was allowed, nay, was strongly urged, to answer; but no counsel for the defence was given him; there was no Baal Rib at his side and he was vouchsafed no opportunity of calling counter-witnesses." He cites no authority concerning the alleged "Baal Rib." While his denial of the right to call counter-witnesses is seemingly an error.

Geikie, in his "Life and Words of Christ" declares of the Hebrew criminal procedure and a defendant's rights thereunder: "Nor was he left undefended; a Baal-Rib or counsel was appointed, to see that all possible was done for his acquittal." Chandler, whose view is that "these statements are not in accord with standard works on ancient Hebrew jurisprudence," says of Freidlieb, a noted authority, in his "Archaeology," that he "emphatically denies that there was any such person as a Baal Rib or Dominis Litis among the ancient Hebrew." He, however, adds: "It seems that in the closing years of Jewish nationality specially retained advocates were known,"[3] citing St. Luke's account (Acts,

3. "Tr. of Jes.," Vol. 1, p. 115.

24; 1, 2,) of the Jews' employing the orator Tertullus to prosecute St. Paul, which he regards as "certainly an exceptional case," and refers to early Jewish procedure in the case of the women pleading in person before Solomon their respective claims to a child. (1 Kings 3; 16-28.)

The author of this study sought further light upon this question of the "Baal-Rib," through Rabbi Drucker, of the faculty of the University of Chicago, and author of "The Trial of Jesus From Jewish Sources"; and from the eminent Jewish lawyer, David Amram, author of "Leading Cases in the Bible," and other legal works. Rabbi Drucker believes Geikie to have been in error, and that he is without affirmative support, citing as "contradicting his statement" the Talmud, and Hastings' Encyclopaedia to the effect that the court itself took charge of the defence, through assignments of its members to that task. He adds: "As far as Geikie quotes from Kitto's Encyclopaedia, he is right; but the passage about the Baal-Rib is not in the original source. Again, Drucker asserts that the word "Baal-Rib" is "used in the Medieval Rabbinical Literature for a lawyer," but declares that that term "is not the real Hebrew equivalent for 'lawyer'" and adds: "The Talmudic expression for the latter word being 'Oroch-Hadin,'" citing to that point "Sayings of the Fathers."

Dr. Amram regards Geikie's statement concerning the "Baal-Rib" as utterly foundationless, and recognizes the import of these two roots which is ascribed to them in various Hebrew dictionaries and encyclopaediae, viz: the "master of a controversy," which he declares means "the owner, a party litigant, just as 'baal habayit' is the owner of the house, 'baal haishah' the master of the woman, i. e., her husband, etc." He further elucidates as follows: "Instead of

'Baal rib' the phrase 'baal din' is more commonly used; and the suggestion that this might mean advocate instead of litigant would cause nothing but amusement to any one who knew Rabbinical Hebrew. In fact there are no attorneys or advocates at Jewish law. The Mishna speaks of an 'orekh din' which Jastrow's dictionary defines as 'one who arranges arguments before the judges; pleaders, advocates, who advise their client what to say or not to say before court.' The use of the words 'pleaders' and 'advocates' by Jastrow is inexact, the term means counsellor if it means anything [in this connection], i. e., one who lays out a plan of the legal campaign and instructs his clients as to how he should conduct himself before the court. The defense of the criminal was left to the judges whose duty it was to protect him, and by vigorously applying the rules of procedure guard him against any unjust or unfair attack by the prosecutor."

It is seen from the foregoing, that while both Rabbi Drucker and Dr. Amram hold that no lawyer or advocate was known to the Hebrew law, yet that the former finds in "Oroch-Hadin" a Hebrew equivalent, drawn from the Talmud, for "lawyer"; and the latter, in "Orekh din" what he understands to be a Hebrew equivalent for "counsellor," in the English sense of that word. Whether either or any of the Hebrew phrases above considered existed in the living sense of indicating contemporaneous professionals as lawyers, or counsellors, in Hebrew jurisprudence before the Christian Era, or, if they did, whether such professionals had ceased to be part of the Hebrew juridical system before Christ came upon earth, we are not advised. And while, as also seen from the biblical account of St. Paul's prosecutor, an advocate actually performed service as such, very soon after Christ's crucifixion, although in the opposite function

from that of a defender in court, yet that Apostle, when before Felix, the Roman governor at Cesarea, may have been proceeded against through an advocate at the suggestion of the Roman authorities. However, the record is clear that Tertullus was brought over from Jerusalem by Jewish authorities; the recital being that "the high priest Ananias came down with certain elders, and with an orator," etc. The seemingly undisputed presumption is, therefore, that this advocate was recognized as such by Jewish Sanhedrists.

On the whole, while it is substantially disproven that in the time of Jesus the Hebrew system of procedure did embrace lawyers, it is not so conclusively shown as to preclude all further inquiry into this interesting phase of the subject.

To revert to the Hebrew trial procedure in general: The judges then, after the evidence on both sides was adduced, discussed the case. Argument favoring the defendant must first be made, and, according to some authorities, a judge must have said, in effect: "As I view the matter and according to such and such evidence, it seems to me the prisoner should be acquitted."[4] etc. Then ensued general discussion. Several rows of disciples, who were being schooled in judicial duties, preparatory to being admitted into membership of the Sanhedrin, sat behind the judges. Any disciple who offered reason for acquittal, was then made a member of the tribunal for that trial. No disciple favoring conviction was allowed to be heard.

The determination of guilt or innocence was by ballot[5]; the youngest member voting first, after being

4. Chandler, "Tr. of Jes.," Vol. 1, p. 163.

5. Benny, "Crim. Code of the Jews," p. 81. Chand. "Tr. of Jesus.," Vol. 1, p. 292. Maimonides, however, declares

admonished by the president. Each judge voted separately, giving his reasons, etc.[6] And, what seems, in view of the principle of unanimity under our jury system, to have been a strange rule of decision under the Hebrew law, was this: An instantaneous and unanimous vote for conviction was invalid, and the defendant was acquitted;[7] such vote being regarded as conclusive evidence that the accused had no friend in court and that the essential element of mercy was wanting.[8] The whole proceeding so ending was considered a conspiracy and the equivalent of mob violence.

We have seen that a majority of two, out of at least the quorum of twenty-three members in the great Sanhedrin, was necessary to a conviction. But according to some authorities, if but twelve favored conviction, two disciples from the first row (the highest grade) were added to the Sanhedrin, and then a majority of two was necessary, in default of which majority two more disciples were added, etc., and so on until the total became seventy-one, when this process ended, and a normal vote was taken; and if this resulted in a majority of but one, the case was reargued until one of the thirty-five yielded; if none did, defendant was acquitted.[9] His release was immediate, the trial being thus ended.

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that the voting was *viva voce*. "Crim. Jur. of Anc. Heb.," p. 143, citing Sanh., 34a, 40a.

6. Benny, "Crim. Code of the Jews," pp. 73, 74. "That the younger members of the Sanhedrin should not be influenced by the voice or argument of their more mature, more experienced colleagues, a junior judge was in these cases always the first to pronounce for or against a conviction."

7. Mendelsohn, "Crim. Jur. of Anc. Heb.," p. 141. Sanh. 17a; Maimonides, H. Sanh. IX., 1.

8. Rabbi Wise, "Martyrdom of Jesus," p. 74.

9. Mendelsohn, pp. 146-148.

CHAPTER XIII

Confession of Defendant, Incompetent—Self-incrimination Discouraged—Merits of Jesus' Defense Not Considered—Change From Sedition to Blasphemy Charge, Not Tenable.

AS regards the confession of a defendant upon trial: This, in the absence of adverse testimony, was incompetent under the Hebrew law, and constituted, in itself, no basis for a conviction, even in the presence of inconclusive testimony adverse to the accused.

Says Maimonides: "We have it as a fundamental principle of our jurisprudence that no one can bring an accusation against himself. Should a man make confession of guilt before a legally constituted tribunal, such confession is not to be used against him, unless properly attested by two other witnesses."[1] And Mendelsohn declares: "Not only is self-condemnation never extorted from the defendant by means of torture, but no attempt is ever made to lead him on to self-incrimination. Moreover, a voluntary confession on his part is not admitted in evidence, and therefore not competent to convict him, unless a legal number of witnesses minutely corroborate his self-condemnation."[2] Rabbi Wise reasons thus: "Self-

1. Maimonides, Mishna, "Sanhedrin," Chap. IV, 2.

2. "Crim. Jur. of Anc. Heb.," p. 133. Tosefta Sanh. XI, Sec. 1, 5; Keth. 27b; Sanh. 9b. Mendelsohn refers to the Talmud: "No man is competent to convict himself, says the Talmud: 'he is his own kin,'" citing Sanh., 9b. et al. And kinsmen were not admissible as witnesses under Hebrew law. Id.

accusation in cases of capital crime was worthless. For if not guilty he accuses himself of a falsehood; if guilty he is a wicked man, and no wicked man, according to Hebrew law, is permitted to testify, especially not in penal cases."[3] Mendelsohn explains: "The reason assigned for this enactment is the wish to avoid the possibility of permitting judicial homicide on self-accusing lunatics, or on persons who, in desperation, wish to cut short their earthly existence, and to effect this falsely accuse themselves of some capital crime."[4] This tendency of mankind in emergency, is reflected in the experience of modern jurisprudence, which sometimes witnesses confession of guilt of one crime, to avoid punishment for another; and the rarer case of assumption of responsibility for crime at the behest of a morbid sentimentality.

These rules of evidence under the Hebrew system apply as well to the next stage in the proceedings against Jesus before the Sanhedrin, viz. that concerning the Messiahship, as to those already related; and are presented, once for all, to indicate in another direction, how full of judicial fault was the whole farce carried on before the Sanhedrin on that fateful night.

Now, instead of seeking to extort evidence from Jesus, the Sanhedrists, if they believed the prosecution had made out a *prima facie* case, should have allowed and encouraged Him to produce witnesses in His defence. We have seen that this was one of the regular steps in criminal procedure of the Jews.

Furthermore: They should have deliberately considered the *merits* of the defence. Says the Law in Deuteronomy (19; 18, 21): "And the judges shall

3. "Martyrdom of Jesus."

4. Mendelsohn, note 311. To same effect, Rosadi, "Tr. *of Jesus.*"

make diligent inquisition; and, behold if the witness be a false witness, and hath testified falsely against his brother; then shall ye do unto him, as he had thought to do unto his brother." The same Scripture (Deut. 13; 14) declares: "Then shalt thou inquire, and make search, and ask diligently."

Says the Mishna: "The judges shall weigh the matter in the sincerity of their conscience." Benny affirms: "The primary object of the Hebrew judicial system was to render the conviction of an innocent person impossible. All the ingenuity of the Jewish legists was directed to the attainment of this end."[5]

No proofs exist, however, tending to show that any witnesses were called in Jesus' defence, nor even that His right to bring them forward was recognized by the Chief Priest and his coadjutors.

Even were it supposed—as do some writers—that the two false witnesses were relied on to corroborate the alleged confession concerning the Messiahship, then witnesses in defence should have been sought by the judges. This phase is considered later; but it may be here remarked, that Jesus could easily have produced witnesses, who knew and would have testified concerning His actual claims in the premises.

To return to the midnight proceedings: St. Matthew's account relates: "And the high priest said unto him, I adjure thee by the living God that thou tell us whether thou be the Christ, the Son of God?"[6] St. Mark's narrative: "Art thou Christ, the Son of the Blessed?"[7] And St. Matthew records Jesus' response: "Thou hast said: nevertheless, I say unto you, henceforth ye shall see the Son of Man sitting at the right hand of power, and coming on the clouds

5. "Crim. Code of the Jews."
6. 26; 63.
7. 14; 61.

of heaven."[8] And St. Mark: "I am."[9] followed by language substantially identical with that used by St. Matthew. This response is generally regarded as an admission, or a claim on the part of Jesus, that He was in fact "Christ, the Son of God."

Now, the initial inquiry at this hearing before Caiaphas had been, as we have seen, as to what Christ had said concerning the Temple—looking to a conviction for sedition. But now, at the same hearing—upon the same trial if it can be called one—is introduced a sudden substitution of a charge, or inquiry rather, of His being a false prophet, or a blasphemer—for that of sedition. And this in the midst of a proceeding which had fallen flat, and which should have been followed by immediate discharge of the Accused.

No legal precedent under the Hebrew criminal procedure was here pursued—this abrupt change of base was a sheer usurpation.

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8. 26; 64.
9. 14; 62.

CHAPTER XIV

"Christ," "Son of God," Meaning of—The "Messiah," Common Dogma of—Two Theories of God, as Spiritual or Human—Mosaic Law as Test.

THE response of Jesus to Caiaphas' adjuration, to the effect that He was "Christ, the Son of God," although unlawfully demanded of Him, will be here discussed upon its merits.

Now, the false prophet of the Mosaic Law in Deuteronomy (13; 1-5), who comes up before the people with the claim that he has seen visions, has dreams, etc., and foretells signs and wonders, must suffer the death penalty, under some unspecified form. While, according to Leviticus (14; 14-16) the "blasphemer"—not otherwise defined—incurs sentence of death by stoning; and all who have heard the blasphemy must join in executing the culprit.

Again: Deuteronomy (13; 6-11) denounces the same punishment against one who, not claiming to be a prophet, seeks to persuade others towards polytheistic and idolatrous forms of worship; the proselyted person being required to first raise the hand of punishment, followed by all the people joining in the killing by stoning. No such tendencies as these were, however, charged against Jesus.

Still another crime is mentioned in the same Book (17; 2-5), namely, that of professing to believe in worship of strange or foreign gods—those unknown to the fathers—but without seeking to dissuade others from monotheism; the guilty one being buried

alive. Various other somewhat similar prohibited acts are found in the biblical records; but they are not strictly germane to this inquiry.

The term "the Christ the Son of God," is understood to embrace two distinct entities. "Christ" is the Greek word translated from the Hebrew "Messiah," and the English adopted the Greek form. It meant "Anointed," or, the promised Messiah or anointed one. While the "Son of God" imports the idea of divine origin, and of equality with God. Chandler declares: "Even to-day there is no dispute between the Jews and Christians in regard to this construction. Jews charge that Jesus made such a claim and Christians agree with them. They are compelled to do so, indeed, or else abjure the fundamental dogma of their faith—the doctrine of the Trinity."[1]

And to make a false claim to either the Messiahship, or to being the "Son of God" was blasphemy under the Mosaic Law.[2]

It was therefore necessary to prove, by at least two witnesses whose testimony agreed as to all elements of the act or acts as defined or understood under that code, in order to establish a case of blasphemy, that Jesus had publicly affirmed during His preachings or teachings, that He was "Christ, the Son of God"[3]—this much at least.

This position presupposes that what was put by

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1. "Tr. of Jes.," Vol. 1, p. 329.

2. Deut. 13; 15. Rosadi, "Tr. of Jes.," p. 175. John 5; 18.

3. He had, so far as the Gospel record shows, made such a declaration but once—to the woman of Samaria (John 4; 25, 26)—aside from His statements to His disciples. To them He had charged them "that they should tell no man that he was Jesus the Christ," (Matt. 16; 20. 24; 24).

the high priest in the form of an inquiry, or of an injunction implying an oath on the part of Jesus, was treated by the Sanhedrin as a charge. But instead of offering proof by witnesses they resorted, as we have seen, to the unlawful and perfidious expedient of requesting, if not demanding, a confession by the Accused.

But it is far from clear that the declaration of Jesus that He was the Son of God formed, of itself, any ground for condemnation for blasphemy. And the same is true of His admission that He was the "Christ," or Messiah. And while the distinction between what He professed *to be* and what He had *taught,*—what was His *doctrine,* in religious faith, is clear and substantial; yet both His teachings and His character as reflected in His works, were involved in this controversy that was really entered into before the Sanhedrin.

It now became a question, who and what *is* this Jesus, as related to the crime of blasphemy.

We saw in the outset what were the salient differences in the phases of Hebrew belief among the sectaries, as to who and what the Messiah was or was to be, as anticipated and defined in their authoritative records. Rosadi quite clearly summarizes the general idea abroad in Palestine on this head, as follows: "The coming of a deliverer, summoned by the Eternal, was not expected by all after the same manner or in the person of a single messenger, or even of two; so that the criterion of elimination became even more problematical and perilous. The most common Messianic dogma was that of a national, political, and religious deliverer, who should appear as a descendant of the dynasty of King David, who should come to lead back again to Palestine all the Jews scattered over the surface of the earth, who should re-establish the Kingdom of the Davidic line,

build the temple anew and set up his throne in the holy city, whence he should convert all peoples to the religion of Jerusalem. There was, nevertheless, not wanting in the Messianic conception of the prophets and theologians of Hebrew literature the mythical form of a Messiah who was to shed His spirit over all flesh and inaugurate an era of perfect peace and justice upon earth. With a Messiah of this type Jesus of Nazareth might be fully identified. It was not necessary to think that such an identity was a sacrilege and an audacious invention of Jesus Himself, who was therefore to be held guilty of blasphemy."[4]

Rabbi Wise,[5] in contending that Jesus' declaration that He was the Son of God "in the sense that He was God Himself" was blasphemous and ridiculous, as being opposed to the fundamental Mosaic precept that God was "wholly spiritual," invisible and indivisible, and that His claim destroyed the "cornerstone of Judaism" in the oneness of God, that in presenting Himself in the flesh as God He "insulted the intelligence and religious consciousness of His Judges," and that He "would have been regarded as insane by a Jewish court" in declaring Himself the Son of God "in the trinitarian sense"—exhibits, in Chandler's view, a purpose "to show by the absurdity of the thing that Jesus never was tried, and that the Evangelical narratives are simply false."[6] The evident attempt of Rabbi Wise in this connection, to disprove the truthfulness of the Gospel account concerning Jesus' prediction that He would be seen "sitting on the right hand of power," etc., because Jesus "never was so seen," and that such words could have originated "only after the death of Jesus"

4. Pp. 192, 193.
5. "Martyrdom of Jesus."
6. "Tr. of Jes."

when the Jewish Christians expected His immediate return as the Messiah,—seems lamentably lame in view of the biblical record showing that the Sanhedrists regarded Him not as insane and therefore not guilty, but as a criminal, and so dealt with Him.

Now, while in the sense of Hebrew law or faith it may have been doubtful whether the theocratic elements involved in the "Son of God" and in the "Messiah," were identical, they seem to have certainly involved the question whether according to that theocracy this Claimant was a blasphemer. And it seems clear that, no matter with what surprise and incredulity the claim was heard by His pretended judges, their course in instantly condemning Him *in view of His claim* exhibited morbid and unreasoning hatred towards Him. For His affirmation on this head demanded, unequivocally, a legal investigation into the truth of the claim under the Hebrew law; and not less so because of the wide divergence between the variant faiths or views of the Jews themselves upon this subject. Indeed, the evidences, pro and con, under that law were so patent, and yet so variant in details as well as in vital divergencies, as to necessarily present to a Hebrew judicial tribunal serious questions of fact and resultant law.

In this connection, it is important to bear in mind that, while at the dawn of the Christian Era the Hebrew conception of Jehovah made Him a purely spiritual and invisible being, and not one of flesh and bone, yet that this theological concept differed greatly from that which had obtained in past ages of the Hebrew Commonwealth. The Law and the Prophets constituted the original background of consideration in such an investigation. In the light of those more ancient authorities, Jesus' profession of being the Son of God would appear in an entirely different light than when considered in view of the

ideal of the Diety which developed under the influence of the later version of the Old Testament—that of the Septuagint, which latter was about two hundred years old in the time of Christ.

The idea of God conveyed in the Pentateuch is that of "a man with human passions," says Chandler.[7] And this tendency characterized all the earlier religions. While in Genesis (6; 6) Moses is made to say: "And it repented the Lord that he had made man on the earth," etc., Samuel in later times (I Sam. 15; 29) negatived that concept in declaring: "And also the Strength of Israel will not lie nor repent," etc. Again: The primitive biblical expression "To behold the face of God" grew into "to appear before God," etc.

Thus were presented, within the scope of the Old Testament authorities, two conflicting ideas, distinguishing between the tangibility in point of human vision and the anthropological character of Jehovah, and the purely spiritual, intangible and invisible attributes conceived by the more modern school of faith. The tendency of the Septuagint was to spiritualize "image of God"[8] into "glory of God,"[9] "mouth of God"[10]" into "voice of the Lord,"[11] etc.

And the divergent conceptions of the Pharisees and the Sadducees, to which we have already adverted, were such as to give rise to animated discussion and vigorous antagonism between those elements of the Sanhedrin before which Jesus was now being forced to appear, if indeed this question of His claim of Sonship of God and His Messiahship

7. Id.
8. Gen., 1; 26.
9. Ps., 19; 1.
10. Gen. 45; 12.
11. Deut. 15; 5.

had been gone into upon its merits. The Pharisees, relying upon the Oral Law in the Mishna, may be presumed to have entertained the idea of spirituality of God, and to have vigorously denied to Him human attributes. While the Sadducees, clinging to the more ancient and variant conception found in the Pentateuch, would be thereby committed to an opposite view. And while, according to the author just referred to,[12] both sects agreed that "Jehovah was a pure sinless spirit," yet the Pentateuch had taught them that "Jehovah not only had appeared in the flesh among men in olden times, but that it was not at all impossible or unreasonable that He should come again in the same form." And the Sadducees would tend to ignore the traditions of the Pharisees and "later developments of Judaism" and appeal directly to the Mosaic law, in determining whether Jesus "could be both man and God."

And we confidently affirm that the Gospel records warrant the belief that Jesus Himself, in such a controversy pertaining to His status, would have appealed to the same theocratic authority—the Pentateuch. For he had constantly appealed to the Mosaic Law in His ministry, and in His arraignments of those of the Jews who had departed from its precepts. To the Pharisees and Scribes He had said: "Ye leave the commandment of God, and hold fast the tradition of men. And he said unto them, Full well do ye reject the commandments of God, that ye may keep your tradition." (Mark. 7; 8-10).

12. Chandler, "Tr. of Jes."

CHAPTER XV

Jesus' Life and Claims in View of Hebrew Law—Blasphemy in This Connection—Sanhedrists Should Have Investigated—Biblical Declarations and Prophesies Cited—The Messiah, Confused Ideas Concerning—Christ Condemned Without Investigation.

LET us now consider the question, What would have been the probable result, had Jesus' claim to possession of divinity as Son of God, or in connection with the Messiahship, been considered by the Sanhedrists pursuant to the Hebrew procedure.

As we have already remarked, it is highly probable that the leading members of the Sanhedrin, including certainly Caiaphas, and Annas as *de facto* if not legally one of its officials, were Sadducees. And those sectaries, upon hearing this claim made by Jesus, and supposing that they intended to investigate its tenability under the Mosaic Law, would have proceeded to adduce evidence tending to disprove the claim, and to establish that, judged by that test, He was not the Son of God or the expected Messiah. The tribunal, however made up as regards sectarianism, should have sought through witnesses the truth involved, if it could be revealed by resort to that Code, or otherwise. But the assumed preponderance of Sadduceean belief suggests their taking the initiative in marking out the legal course to pursue to that end, if a deliberate trial and not an ignominious pretence were contemplated.

How, then, through legal evidence, should the at-

tempt have been made to make out a *prima facie* case against Jesus on this head? Would proof by two witnesses that He, while daily teaching or preaching before the people, had *declared* that He was the Christ, or the Son of God,—would this in itself suffice to convict Him of blasphemy? If it would, such conclusion could be justified only upon the theory of rejecting His religious propaganda and His miraculous works, and taking everything against Him for granted, and by ignoring the authoritative evidences, *pro* and *con,* already referred to,—in other words, by concluding once for all that His mere *declaration* conclusively proved its own falsity. And upon this theory the witnesses might have been ignorant alike of His works and of the elements of Old Testament theology in this connection, and so unable to testify to the falsity or otherwise of His claim; but the Sanhedrists would, upon proof of the bare declaration, have found it to be false. They could do this only by assuming that the Mosaic, or the Talmudic authorities, or both, denounced such declaration to be not only false, but as constituting *per se,* blasphemy.

It is clear, in view of the divergent conceptions of Jehovah to which allusion has been made, and of the various theories then existing regarding the Messiahship, that in the process of juridical investigation of variant faiths or schools of doctrine, in determining guilt or innocence, the declaration or claim of an accused person might be false when judged of from a given view-point, and yet not necessarily tend to establish guilt under a different standard of faith. And it is obvious that this truism applies with special force to blasphemy.

Therefore, it seems inevitable that the Sanhedrists, who were bound to know and to apply the theistic law involved, were confronted with the duty

of comparing His declarations in question and His works, with the authorities applicable to the case, in order to judge upon the issue presented by His claim.

One of these—that He was the Son of God—related to the present and past; the other—that He was the Christ or Redeemer, and would thereafter, as the "Son of Man," be "seen sitting on the right hand of power," etc., related in part to the then future.

Now, while the biblical and Talmudic evidences and prophesies, as applied to these various claims of status and of power, differed considerably, yet, as we shall see, that part of the case involving prophecy, its proofs and disproofs, was no less certainly dealt with among those evidences than were the elements bearing upon His present status, and the duty of investigation on the prophetic side was therefore no less imperative.

It is plain then, that what Christ had professed to be, and what had been His ministry and His power in matters of faith and piety, were all involved in duly trying Him for blasphemy. Not until both of these phases of His claim had been presented by prosecuting witnesses, could His judges have had before them any legal or theocratic foundation upon which to base their decision as to guilt or innocence.

But had proofs been gone into, it seems certain that the facts to which any truthful witnesses would have testified as to His teachings, His works and those acts that were everywhere regarded as miracles by those who witnessed them, would, in the light of those Hebrew authorities, have established His claims, or have rendered them so far debatable as to preclude a judgment of conviction. We believe that it was because those scheming persecutors saw with a clearness which dispelled all doubt, that the descent *to inculpatory* proof meant inevitable failure, that

they durst not and so did not make the attempt.

And no matter which side had initiated probative proofs before the Sanhedrin, substantially the same case as regards the facts would have been made out. Therefore the biblical and other tests applicable would have been involved in substantially the same way, in any turn which a proper trial might have taken.

Granted, then, that the facts were elicited, by whomsoever brought forward: then the Sanhedrists, seeking ground for condemnation, and Jesus, seeking exculpation, would in virtue of the Pentateuch and the sacred literature, have dealt with authoritative declarations to the effect:

That God had appeared in the flesh: (Gen. 18; 1-8. 16; 10-13. 13; 11, 12. Exo. 3; 2-6. Jewish Encys. Vol. 1, 583.

That Jehovah had announced a begotten Son in the Almighty: Isa. 9; 16.

A plurality of the Godhead: Isa. 2; 7. Isa. 9; 16.

The angel of Jehovah, even in Jehovah, as ambassador on earth of the Deity: Exo. 23; 20-1. Judg. 6; 11-23.

This Son was to come upon earth as Redeemer: Isa. 7; 14.

His self-manifestation: Judg. 6; 11-24.

Of Jehovah's disposition to fight—driving out moneychangers: Exo. 15; 3, 6. Gen. 6; 6, Deut. 6; 15. Psa. 3; 4. I Kings, 10; 9. Prov. 6; 16.

That He was born in Bethlehem: Mic. 6; 2.

That He was to spring from David: Jer. 23; 5, 6.

The Baptist His forerunner: Mal. 3; 1. Isa. 40; 3.

Began to preach in Galilee: Isa. 9; 1, 2.

Entered Jerusalem on an ass: Zech. 11; 12, 13.
Born of woman—in form of man—human attributes: Isa. 7; 14. Gen. 3; 15.
The Son in equality with God: Psa. 2; 7. Isa. 9; 6.
Man of sorrows—despised: Isa. 53; 3.
Betrayed by friend: Psa. 41; 9. Zech. 11; 12, 13.
That Messiah not to come until scepter departed from Judah and lawgiver from between his feet: Gen. 49; 10.
That Messiah to perform many miracles: Isa. 35; 5, 6.

In this connection, the fact that the Jews were expecting a Messiah lends additional pertinency to Jesus' claim on that head, and emphasized it as an essential element in the case, upon which evidence must necessarily have been heard in its determination. This duty, and the application of all Messianic tests "of each and every school confronted the Sanhedrists," says Chandler.[1]

This Deliverer was, according to those tests, due to appear in Israel at that time, as those officials well knew. Many other nations were also expecting a Renovator of the world, and the idea had penetrated even the faith of Romans, as witness the song of Virgil.[2]

Jacob's prophecy (Gen. 49; 8, 10) furnished to the Jews the sign of His coming, in the deposition of Archelaus and in the departure of that judicial power which was the arbiter of life and death. Archelaus had been deposed in A. D. 9, and, as we have seen, the *jus gladii* had passed into Roman jurisdiction.

That the Messiah would be a scion of the House

1. "Tr. of Jes.," Vol. 1, pp. 318, 319.
2. Virgil, Egl. IV. Renan, "Life of Jesus," p. 79.

of David seems to have been the belief of all sectaries.[3] There had been three pretenders to the Messiahship in Christ's time: Judas of Galilee, whose followers expected "an earthly hero * * * who would emancipate the Jews by driving out the Romans and permanently restoring the Kingdom of David"; Simon of Perea, and Althrouges, a peasant.

In addition to the Messianic conceptions heretofore mentioned, the Shammaites looked for a renowned statesman-warrior and religious zealot;[4] while "the gentle Hillel" and followers conceived in Him a prince of peace[5] whose spirit would still war's tempests and transmute Jerusalem into "the grand center of international brotherhood and love."

Out of these divergent conceptions could come, in religio-judicial controversy, only a confusion of ideas which might, indeed, result in rejecting mere pretenders, but which could hardly condemn as worthy of death one who, like Jesus, had so largely fulfilled the prophecies, and so deeply inpressed not only the multitudes who had heard Him, but even the jealous and conspiring enemies whose fears of His supremacy over Israel are too well evidenced to be doubted.

The evidences would have been the same in effect, whether they had called in St. John and St. Peter, or some other of His disciples,—or whether some of His inveterate enemies had been summoned to relate what, perchance, they might have known concerning His life and teachings. He had, indeed, "spoke openly" and had nothing to fear from the lips of witnesses who told only what eyes and ears had re-

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3. "Sanhedrin," fol. 97. Jer., 23; 5, 6. Matt., 1; 20. Luke, 1; 32.

4. Chand., "Tr. of Jes.," Vol. 1, p. 319.

5. Rosadi, "Tr. of Jes.," p. 192.

vealed to them. The *false* witnesses—those who had so differed as to fail to convince even the Sanhedrists, had tried to alter what St. John makes Jesus say concerning the temple, namely: "Destroy this temple," that is, if you were to destroy it, or, suppose you destroy it, "and in three days I will raise it up" (John 2; 19)—to "I will destroy." And while the Evangelist believed Jesus thus spoke "of the temple of his body,"[6] still, ignoring the statement as a symbolism and regarding it—as the Sanhedrists had probably done—in the literal sense, His declaration but meant that He would speedily restore the great central House of Hebrew worship, if supposedly destroyed. We shall discuss later on the question, how far Jesus' reference to the Temple in this connection could be considered under a charge of blasphemy.

Those falsifying witnesses were, according to the Gospel record, the only testimonials adduced during the proceedings against Jesus in the palace inclosure.

Rosadi, who affirms what the sacred records indicate,—that Nicodemus and other educated Hebrews of that time "firmly believed" in Christ as the Messiah, and "recognized in Him the Son of God," seems to speak truly in declaring: "The most ancient Christian Churches, which began to profess this conviction, did not found it elsewhere than in the Canon of that Scripture which was the text of Hebrew meditation and Hebrew faith. From the passage in Genesis which has been called the Proto-Gospel, and in which God proclaims to the Serpent, to the spirit of evil, his punishment, down to the book of Daniel; * * *; from the Pentateuch to the Psalms; from the Psalms to the Prophets; from the Prophets to the closing pages of Hebrew tradional literature, in

6. *John, 2; 21.*

which are completed the initiatory signs of a Messiah, son of Joseph, suffering, calumniated, crucified —Christianity gathers the Messianic predictions from amidst this intellectual and sentimental patrimony belonging to the Jews. This is tantamount to saying that the identification of the Messiah should have appeared to calm and unbiased judges as a matter to be discussed, if not to be decided in favor of the Accused, who with His eyes fixed upon the cross declared Himself to be the Christ, the Son of God. To have not discussed it, to have denied it without debate, constitutes the whole injustice of the second charge and of the condemnation."[7]

But if they had discussed and weighed the declaration, in the light of these, or some of these Hebrew records and literary comments, even without introducing the scrap of testimony, and had they judged and condemned Jesus as the result of immature and erroneous deliberation, they would have thus exhibited a spirit of inquiry which would have gone far towards acquitting the Sanhedrists of downright disregard of fairness and justice, even though the failure to resort to the evidence of witnesses would still have left the proceeding without the essential virtue of a trial according to "the law of the land." For errors amounting to gross irregularities are not, and were not anciently so uncommon as to result in bringing upon judicial tribunals the reproach of tyranny, or of tragic wrondoing. Yet, if we are to credit the Hebrew authorities, some of which have already been cited, some of which will appear hereinafter, the Jewish procedure in capital cases required such immunity from error as would, in the above stated premise, have resulted in public condemnation of Hebrew judges.

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7. "Tr. of Jes.," p. 193.

But ruthlessly—in hatred which defied the landmarks of Hebrew jurisprudence, and all sense of justice save that of blind fanaticism,—those judges declared that Christ's declaration of Sonship and His profession of Messiahship constituted a capital offense, when they, through the chief, declared "He hath spoken blasphemy."[8] St. Matthew makes them say "He is worthy of death,"[9] while Mark's statement is that the high priest said "What further need have we of witnesses?" and that "they all condemned Him to be worthy of death."[10]."

8. Matt., 26; 65.
9. Id., 66.
10. 14; 63, 64.

CHAPTER XVI

Theory of One Charge, of Blasphemy—Jesus' Declaration Concerning Temple—The "False Witnesses" as Regards Blasphemy—The Declaration Not Blasphemy of Temple—Deliberation Over Mosaic Tests Necessary—No Legal Charge of, No Blasphemy Established—The Oath or Adjuration, Imposed Unlawfully—Hebrew Requirement that Defense be Interposed.

THIS phrase "further need of witnesses," in connection with St. Matthew's general account, has suggested to some writers and commentators the view, that at this stage of the proceedings the Sanhedrists reverted to the alleged false testimony of the witnesses under the charge of sedition,—now supposedly abandoned—and that they regarded Christ's declaration that He was the Son of God and the Messiah, in connection with that testimony, as sufficient to warrant conviction for blasphemy.

This theory may be considered in the sense of an attempt to sustain a plausible case under the Hebrew procedure. And while, in connection therewith, the point that the chief priest demanded "Answerest thou nothing?" in the light of that testimony, and that Jesus "held his peace,"[1]—might be taken, theoretically, to have been a waiver on His part of any defense by way of introducing witnesses produced in His favor, yet it remains to consider how far discordant or other testimony concerning the destruc-

1. Matt., 26; 62, 63.

tion of the Temple would avail to sustain a charge of blasphemy.

This question involves another point in this proceeding,—whether before Caiaphas and the Sanhedrin there were two charges—one of sedition, one of blasphemy, considered, or only one,—that of blasphemy. This last question has been emphasized by the controversy among various writers, as to whether St. Matthew's passage correctly records the alleged testimony, in the recital: "I am *able* to destroy the temple of God and to build it again in three days,"[2] interpreted as a claim to divine power, and therefore as one in legal character with His claim of Messiahship; this in the light of the response by His hearers: "Forty-and-six years was this temple in building, and wilt thou rear it again in three days?"[3] the opposing theory among those disputants being based upon St. Mark's language regarded as imputing a seditious attempt to subvert the Mosaic institutions: "I *will* destroy this temple,"[4] etc. Such opposing theory is, in that connection, interpreted in the light of a similar charge against Stephen shortly afterwards, viz: "For we have heard him say, that this Jesus of Nazareth shall destroy this place, and shall *change the customs* which Moses delivered us."[5]

Judge Gaynor, the accomplished jurist of the New York bench, in his address upon the trial of Jesus,[6] takes the ground that blasphemy was the one charge made against Him before the Sanhedrin. He says: "It is plain from each of the gospel narratives, that

2. 26; 61.
3. John, 2; 20.
4. 14; 58.
5. Acts, 6; 14.
6. "Classics of the Bar," p. 30.

the alleged crime for which Jesus was tried and convicted was blasphemy; * * Jesus had been claiming supernatural power, which in a human being was blasphemy." (Citing John, 19; 23). His reference is to Jesus' "Making Himself God," not to what He said concerning the Temple.

While the present writer is not convinced that the original charge was not sedition, which was abandoned after the false witnesses had appeared; he is resolved to discuss what could have been the probable outcome of a fair trial, had blasphemy been regarded the only charge.

Suppose, then, that blasphemy constituted the one charge made or considered; that the Messiahship and Jesus' declaration concerning the Temple were but phases of that charge as understood by the Sanhedrists. That the testimony of those who came last were "two false witnesses," but that their testimony, considered as that of two coinciding witnesses, whether innately false or otherwise, was regarded by the judges as at once the charge and evidence, and as credible; that Jesus' admission in response to Caiaphas' adjuration, that He was "Christ, the Son of God," and His prophetic reference to His "sitting at the right hand of power" constituted, together with said testimony, the entire case as evidence of blasphemy.

Now, some writers adopt the view that the Sanhedrists would have been warranted in giving credence to these "two false witnesses." In this connection the Revised Version may be considered, wherein it renders the phrase in question, "afterward came two,"[7]—thus not directly imputing falsity to those witnesses. And Broaddus' Commentary on Mat-

7. 26; 60.

thew,[8] observes of them: "We might suppose that these two agreed in their testimony," but he refers to St. Mark's record of their disagreement.[9] Judge Gaynor adopts the view that "they appear to have substantially agreed"; basing his conclusion upon Mark's recital,[10] which, he declares, "states just what the witnesses said, from which they appear,"[11] etc. He further reasons, that while both Matthew and Mark say the witnesses were false, the former does not state that they did not agree. Chandler observes, that on the theory of assumed divine power concerning the temple, "the accusation was presented by two witnesses, as the law required." But he rejects the element of the one-charge theory which assumes from the evidence of St. Matthew's Gospel that Christ was divine; his remark being: "It is not clear that a threat to destroy the Temple implied a claim to supernatural power."[12] But does not that Evangelist's statement clearly refer to the *ability*, rather than to a *threat* to destroy? And would not Jesus' claim of ability in that connection imply supernatural power?

Renan says,[13] and with apparent soundness: "To blaspheme the temple of God was, according to Jewish law, to blaspheme God Himself," citing Matthew (23; 16, 17, 21). "Whosoever shall swear by the temple," etc. However, Jesus' imputed claim in question can hardly be regarded as "swearing by" or taking an oath on the Temple.

But was it blasphemy of the Temple to claim

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8. p. 547.
9. Mark, 14; 59.
10. 14; 58, 59.
11. "Classics of the Bar," pp. 31, 32.
12. "Tr. of Jes."
13. "Life of Jes."

power to destroy it? This was not to *threaten* its destruction. We believe it was, and was intended by Jesus to be, a claim of supernatural power. If it was, did the claim amount to anything more—in the sense of blasphemy—than that power to destroy implied power to preserve or protect, or to rebuild? If power to destroy implied that He might destroy, did not it also imply that, as against any other power or attempt to destroy, He was able to and might save and preserve it? And, stated in connection with His declared power to rebuild in so short a time as to mean miraculous action, was the divine power thus supposedly announced a menace to either the Temple or its God? We are in this particular connection confined to discussion of blasphemy of the Temple, and *through it* of blasphemy of Jehovah.

The conclusion that the claim of ability to destroy and to rebuild the Temple, was blasphemy, seems untenable. We have found no Hebrew authority sustaining such conclusion. Rabbi Hirsch, speaking of blasphemy, declares: "that he could destroy the Temple and rebuild it within three days, can by no stretch of construction be contorted into that offense for which the Jewish law provided lapidation as punishment."[14] That punishment (i. e. stoning,) is of course understood to have been the penalty for that offense. (Levit. 24; 16).

Pursuing our premise here—that credence was given the witnesses by the Sanhedrists, and that the charge was blasphemy, they would seem to have faced these questions: Is it divinity He claims? Is He divine by virtue of His power over the Temple? And, in view of His claim of Messiahship and one-

14. "The Crucifixion from a Jewish Standpoint," pp. 56, 57.

ness with God, in response to Caiaphas' adjuration, is a case of blasphemy made out, on these evidences, because He declared that power concerning the Temple?

We regard it as morally certain that, upon the theory now being considered, the Sanhedrists must have regarded Jesus' declarations as narrated by the witnesses, and in the light of His response to Caiaphas, as amounting to a claim of divinity. Whether such claim was true would depend on who and what Jesus *was,* in view of such claim, that is, in view of His proclaimed power over the Temple, and His claim, in that connection, of Messiahship and oneness with God.

But in the case now under consideration, the only evidence as to the character, life, and works of Jesus, that had been adduced,—that is, as to who and what He *was*—was what the witnesses had stated concerning what He had *said,* added to what He Himself had declared Himself to be, in response to Caiaphas' adjuration. But whether His claim of power over the Temple, and His claim that He was "Christ, the Son of God," the Messiah,—was so far true, or capable of proof in such degree as to acquit Him of blasphemy of Jehovah through blasphemy of the Temple, could no more be juridically determined on the merits, by the Sanhedrists, without deliberation upon the facts in the light of Mosaic authorities as to the law, than could the broader issue of Messiahship, as we have first herein discussed it, have been duly dealt with by them otherwise. They were not less derelict in their official duty in the supposed case now under consideration, in condemning Jesus without the aid of witnesses touching the works, the miracles, and the precepts that He had performed and taught in His ministry,—than in the general case before the Sanhedrin as hereinbefore

discussed. Only by showing His performances in His life-work, in connection with His declarations and claims, could His power—His divinity, be known to the tribunal or to the people.

They would still have had to face those Hebrew authorities, and the attendant disputations pertaining to the Messiahship arising upon the assumption of supernatural power in Jesus, to which we have already alluded.

And the presence of the testimony concerning the Temple—here regarded as credible, but going only to what Jesus *said*,—would not render general testimony touching His ministry less essential than it was in the other case we have discussed—in which that testimony as to the Temple was rejected.

Indeed, had the Sanhedrists recognized testimony on behalf of Jesus, relative to this very incident of His alleged claims as to the Temple, His beloved disciple St. John could and would have spoken to the sense in which Jesus referred to the destruction and rebuilding of the Temple: "But he spake of the temple of His body." (John 2; 21, 22). And to His declaration: "destroy this temple," etc. (John 2; 19). And, while it is doubtless true that those of the hierarchy who heard Him speak, understood Him in the literal sense, and believed that His declaration meant physical harm to the Temple, yet this matter of intent was at issue before the Sanhedrin, and therefore should have been dealt with through further evidence. And it is no answer to this suggestion, that Caiaphas said to Him "Answerest thou nothing? what is it which these witness against thee? (Matt. 26; 62. Mark 14; 60) and that He "held His peace, and answered nothing." We believe it has been substantially shown that He might legally remain silent and refuse to recognize, in the confusing and false testimony then adduced,

that any case had been made against Him, no matter how His judges might view it, and thus He was justified in law in refusing to testify.

In this particular connection, we are unable to coincide with the position assumed by Judge Gaynor concerning the legal effect of the inquiry of Caiaphas. He states: "This was the usual call made upon the accused to put in his defense." Adding: "But it was a travesty upon justice to require Him to make His defense without giving Him time to prepare it."[15]

Caiaphas' inquiry seems, from its very terms, to have been rather one as to what was the effect of the testimony which the Gospels refer to as false. And would not the meaning have been regarded as materially different, had the statement been, in substance, this: The prosecutors have brought in their evidence, and the case for them is closed. Have you any evidence to offer in defense to the charge of blasphemy? While opinions may differ on this head, we have not found other authority than that of Judge Gaynor for the assertion that Caiaphas' communication to Jesus "was the usual call upon the accused to put in his defense." But if it was, what different effect would the same inquiry have had when put to Jesus by Pilate? "And Pilate again asked Him, saying Answerest thou nothing? behold how many things they accuse Thee of." (Mark 15; 4). "Then saith Pilate unto Him, Hearest Thou not how many things they witness against Thee? And He gave him no answer, not even one word: insomuch that the governor marveled greatly." (Matt. 27; 13, 14). Yet Judge Gaynor is emphatic in his position that Pilate at no time undertook to try Jesus, as we shall see further on.

Mendelsohn declares the Hebrew procedure in

15. "Classics of the Bar," pp. 32, 33.

opening the defense in criminal cases to have been as follows: "All the prosecuting witnesses having been duly examined, the court directs itself to the defendant. He is encouragingly addressed, and called upon to present disproving testimony,"[16] citing thereto the Talmud. Indeed, as we have seen, the judges were logically and essentially defenders of the accused under the Hebrew law. Chandler observes: "If, as has been contended, the false witnesses were relied upon by the Sanhedrin to corroborate the confession of Jesus, then under the Hebrew law the judges should at least have sought witnesses in His behalf, or should have allowed His friends time to find them and bring them in."[17]

But suppose the witnesses who told of Jesus' alleged statement "I will destroy this temple that is made with hands and within three days I will build another made without hands"—had been credited, and those who related the alleged statement of His ability to destroy, had been rejected. Such proposal, if credited, would no doubt be understood by the hearers and the Sanhedrists as a threat against the Temple. Nor do we perceive how such threat, coupled with the prediction that He would build a temple "made without hands," and that within "three days," could have been understood by them as other than a proposal to exercise supernatural power. And while its effect would be more serious upon the feelings of the Sanhedrists than that produced by His alleged "I am able to destroy," it would probably have amounted to a similar case in substance. For a mere threat, unattended by some present maneuver towards fulfillment, falls short of

16. "Crim. Jur. of Anc. Heb.," pp. 132, 133. Sanhedrin, 32b.

17. "Tr. of Jes.," Vol. 1, p. 313.

an attempt. The further element of His admission of Messiahship, taken in connection with that testimony, would therefore pertain only to what Christ had *said*. Hence, it seems that the necessity of going into proofs concerning His moral and spiritual character through His works, precepts, and miracles, in order to determine His guilt or innocence of blasphemy, would be the same here as in the other instance now under immediate consideration. We are assuming here, for argument's sake, that not sedition, but blasphemy, would be the kind of offense, if any, established by proofs regarding a threat to destroy the Temple.

CHAPTER XVII

Caiaphas, a Judge, Could Not Lawfully Accuse Jesus —His Implied Charge of Blasphemy—Hebrew Defendant Not Subjected to Oath—Caiaphas' Rending of Garment, Was it Unlawful? Authorities Considered—Of Doubtful Legality in This Instance.

TO revert to the stage of proceedings before the Sanhedrin at which Christ was by Caiaphas declared "worthy of death":[1]

The implied charge of blasphemy, made by Caiaphas at this point, was not lawful under the Hebrew procedure.

As the Sanhedrin could not, neither could Caiaphas, a member thereof, prefer a criminal charge, or become the accuser of Jesus. None save the principal or leading witnesses (as we have seen) could prefer such charges under the Hebrew law. Caiaphas, being one of the judges, was incompetent as a witness. It was therefore out of the question for him to be an accuser. Further: we have seen that the charge itself was legally made when the testimony of witnesses was given, and rested upon and was in law declared in and by the testimony.

When, therefore, after the false witnesses had spoken and the charge of sedition fell for want of support, and Jesus should then and there have been released,—when Caiaphas, perverting the Hebrew procedure, deliberately became the accuser, upon a new and different charge, and adjured Jesus to de-

1. Matt., 26; 66.

clare whether He was "the Christ, the Son of God"[2] —thereby in effect charging Him with blasphemy, he violated the law, and forced from Jesus a confession upon which an illegal condemnation was declared. For while the words "He hath spoken blasphemy," followed by "what think ye? They answered and said, He is worthy of death"—did not constitute a formal or legal judgment, it yet served as a virtual and understood condemnation.

If, then, we regard the charge based upon the witnesses' testimony as having fallen, and the proceeding under that charge as ended, it would seem to follow that there was no legal charge upon which the condemnation for blasphemy could rest.

But the frenzied eagerness of His accusers spirited another error into the record. The would-be charge made by an unlawful accuser, was made tangible, if it had any semblance to law, by the oath, or adjuration, adminstered by Caiaphas.

Says Broadus: "*I adjure thee* means exactly 'I put thee on oath.'" He adds: "The high priest used the most solemn form of oath, *by the living God*. If one answered after such an adjuration he answered on oath."[3]

However, Broadus regards the oath thus put to Jesus as unjust but "not formally illegal," as, he affirms, the Mosaic law "provided that in some cases of uncertainty the accused should take an oath upon the matter,"[4]—citing Exo. 22; 10. Numb. 5; 19. I Kings 8:31. As will be seen, the instances thus referred to relate to larceny, wifely infidelity, and sinning against one's neighbor. Perhaps there may have been other legitimate instances of imposition of the

2. Id., 63, 64.
3. "Commentary on Matthew," p. 548.
4. Id., p. 549.

oath upon a defendant, but none are pointed out as applicable to blasphemy.

On the other hand, Mendelsohn declares: "Neither the Bible nor the Talmud imposes on the witnesses any oath to confirm his testimony. The divine prohibition of bearing false witness was considered by Moses and by the Jewish legislators succeeding him, as sufficient to induce people to state truths only. Later Jewish sages are of the opinion that the witness who would not tell the truth without an oath, would not scruple to assert falsehood with an oath."[5]

Mendelsohn explains, however, that as the witness "is not required to swear to the truth of his evidence, the Rabbis prescribe a preliminary precaution of admonition, in the course of which the witnesses, standing in the presence of the whole assembly in court, are earnestly exhorted to testify to such matters only as have come under their personal observation, and cautioned against asserting ought based upon conjecture or hearsay; at the same time they are forewarned that the court will subject them to close examination and searching cross-examination, and carefully weigh the evidence."[6] He truly speaks of this admonition as "striking and awful" in nature, and sets it out at large. Chandler, too, after copying the long admonition, says he regards it as used "in place of an oath," and adds: "The two elements of this preliminary caution were, first, a solemn warning against injustice to the accused through false swearing and a reminder of the inevitable retribution of Heaven upon the perjured swearer and his remote descendants; secondly, a pointed admonition against timidity or fear in testi-

5. "Crim. Jur. of Anc. Heb.," p. 120, note 276.
6. Id., Sanh., 37a.

fying."[7] This "tremendous sanction" he says, "bound" the witness; and he compares it in its binding effect upon the conscience, with the Mahometan and other Asiatic oaths.

The upshot of all of which seems to be, that the adjuration imposed by Caiaphas upon Jesus was, as regards form and substance, such as to be legally binding when applied to a witness in general, but that it was not in keeping with the formal adjuration and warning known to the Hebraic procedure. And, while we believe Jesus regarded it as binding as an oath we have seen that it was used in this instance to enforce a confession—an invasion of the legal rights of the Accused.

Did Caiaphas commit another error in rending his garment? Being high priest, he "rent his garments, saying, He hath spoken blasphemy."[8]

Commentators disagree as to whether this rending was justified under the Hebrew law, and as to its legal effect.

We find no injunction in the Scripture, for or against the rending of garments by an official in connection with a trial for blasphemy or other crime. But the Mosaic Law forbids a high priest, in general terms, from rending his clothes. (Lev. 10; 6. 21; 10. Ordinary Hebrews are variously referred to in the Bible as rending their garments as a token of sorrow, or bereavement. But the Brothers Lemann, in their "Jesus before the Sanhedrin," are quoted as declaring that "to the high priest it was forbidden, because his vestments, having been made after the express orders of God, were figurative of his office." Edersheim, while not referring to practice in connection with a trial, yet in his account of Jesus' trial,

7. "Tr. of Jes.," Vol. 1, pp. 134, 135.
8. Matt., 26: 65.

says of Caiaphas: "as the law directed, when blasphemy was spoken, the high priest rent both his outer and inner garment, with a rent that might never be repaired."[9] But Chandler, who thus quotes Eidersheim, contends that the law referred to by him was Rabbinic, not Mosaic; and after declaring that "the doctors never repealed a Mosaic injunction," he expresses doubt as to whether the Talmudists could change the law "in the case of blasphemy,"[10] declaring that this right is denied by many writers. Rabbi Wise[11] is cited to the point that the high priest was forbidden to rend his clothes on Sabbaths and holidays; from which Chandler concludes that Caiaphas' act was illegal.

Hovey, in the Commentary on St. Mark,[12] says this act was forbidden the high priest as a sign of sorrow (citing Leviticus), "but from the example in II Kings, 18; 37, it had become the rule to admit the act as a sign of horror at blasphemy"; and cites Dr. Plumptre as saying "the judges in a Jewish trial for blasphemy were bound to rend their clothes when the blasphemous words were uttered"; that accordingly, for the high priest to rend his robe was "almost as much a formal sign of condemnation as the putting on of the black cap by an English judge."[13]

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9. "Life and Times of Jesus the Messiah," Vol. 2, p. 561.
10. "Tr. of Jes.," Vol. 1, p. 291.
11. "Martyrdom of Jesus," p. 74.
12. p. 225.
13. Rev. E. H. Plumptre, D. D., in his Commentary on "The Gospel According to St. Matthew, St. Mark and St. Luke," p. 168. Dr. Hovey's quotation from Plumptre is embraced in the note to Matt., 26; 65. Seemingly in explanation or by way of illustration of his position as thus quoted, Dr. Plumptre adds: "In Acts xiv. 14, the same act appears on the part of Paul and Barnabus, as the expression of an impulsive horror, as it had done of old when Eliakim

Upon what authority Plumptre's conclusion was based does not appear. Hovey also refers to Maimonides' thirteenth century view of Jewish customs and traditions, to the same effect, and observes that he "marks out the precise manner in which clothes should be rent in horror at blasphemy." The custom of rending clothes as "the usual expression of grief, horror, or other violent and uncontrollable emotion" is traced back to the early Greeks and Romans. He concludes that the prohibition in Leviticus "was in mourning for the dead, because such mourning unfitted him for the performance of official duties, and it was not understood as prohibiting the practice on other occasions."

Rabbi Hirsch declares: "That the high priest and his associates rent their garments at an utterance of Jesus would suggest that he had been indicted and was tried for blasphemy."[14] He does not say it indicated conviction, yet this conclusion may be inferable from his expression.

The contrary view is held by Rabbi Drucker, who

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rent his clothes on hearing the blasphemies of Rab-shakeh (2 Kings xviii. 37)." But as the words referred to by Dr. Plumptre and spoken as related in Acts and 2 Kings, were uttered, not "in a trial for blasphemy," but outside of court and as parts of historical occurrences, it seems far from clear that those words, in the connection in which they were spoken, and followed by rending of clothes by Paul, Barnabus and Eliakim, constitute a precedent for the rending of clothes by judges on a trial for blasphemy, and where, as in the case of Jesus, the Accused, in speaking of "the Son of man sitting on the right hand of power," was revealing His *claim* of being the Son of God, and that of His Messiahship—the declaration having been evoked through the imposition of a solemn oath in what was at least the pretence of a judicial investigation.

14. "The Crucifixion from a Jewish Standpoint," p. 56.

asserts that Caiaphas was ignorant of Jewish jurisprudence and of laws pertaining to priesthood, then declares: "By tearing his garments the high priest not only transgressed the laws of festival observance, but he transgressed a Biblical prohibition which absolutely forbids a high priest to rend his garments on any occasion whatsoever,"[15]—citing Leviticus.

From the foregoing, it would seem that this act, performed on a holiday, was illegal on that ground. But that, aside from this consideration, to have had any legal effect as a condemnation, or as a pronouncement of sentence, it should have been preceded by other and substantial evidence behind the acknowledgment or adjuration by the defendant.

15. "The Trial of Jesus from Jewish Sources," p. 12.

CHAPTER XVIII

Jesus' Condemnation for Blasphemy No Lawful Judgment—The Unanimous Verdict Required Acquittal—No deliberation by Sanhedrists—Mosaic Authorities on This Head—Scribes' Records, Their Uses as Legal Guides—Secret Ballot Required—No Specific Punishment Imposed on Jesus.

CAIAPHAS said: "Ye have heard the blasphemy; what think ye? And they all condemned him to be guilty of death."[1] This is the record of Matthew and Mark.

Here was a unanimous voice. It seems to have been unlawfully expressed. The head of the tribunal had, prematurely and in an unlawful manner, indicated his opinion and unduly influenced his fellows. The condemnation itself was no lawful pronouncement of verdict, nor a legal rendition of judgment. These conclusions we believe to be warranted by the facts and the Hebrew authorities applicable.

The elucidation of the first point here under consideration will evoke surprise, no doubt, among all who are familiar with the common law rule *requiring* a unanimous verdict in criminal cases. But that the contrary was the principle of determination of guilt under the Hebrew procedure is apparently so indelibly fixed in the records of Israel as to be provable beyond doubt. This point appeared in our explanation of the constitution of the Sanhedrin.

Says Mendelsohn: "A simultaneous and unanimous verdict of guilt rendered on the day of the

1. Matt., 26; 65, 66. Mark, 14; 64.

trial has the effect of an acquittal,"[2]—citing the Talmud, and Maimondies. The reason of this rule seems to have been, that, in view of the fact that the judges themselves were defenders of the accused—there being no lawyer or advocate to perform that function under the Hebrew system—unless some one at least among the members of the Sanhedrin voted for acquittal, the defendant was without "a friend in court," or a single defender among all those who, making up the quorum, were bound to see that his rights were protected against an unjust verdict. The very idea of a unanimous vote for conviction, therefore, was abhorrent to the Hebrew mind, and argued a frenzied miscarriage.

Mendelsohn reasons thus: "Where all suddenly agree on conviction, does it not seem that the convict is the victim of conspiracy, and that the verdict is not the result of sober reason and calm deliberation? * * * * All the judges give up the prisoner as lost and there will not be even one to plead his cause, as the law provides there should be; and as every irregularity in the proceedings operates in favor of the prisoner, he is, in the case before us, set at liberty." He continues: "The defendant himself may argue in his own behalf, and when he does not avail himself of this privilege, others must do it for him."

Rabbi Wise holds to the same effect, declaring that when all pronounce the defendant guilty, the verdict was invalid "and the sentence of death could not be executed."[3]

Furthermore: Before a verdict could be had, there must have been a discussion among the mem-

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2. "Crim. Jur. of Anc. Heb.," p. 141. Sanh. 17a. Maimon. H. Sanh. XI, 5.

3. "Martyrdom of Jesus."

bers of the tribunal, concerning the merits of the case under the evidence. In this preliminary debate the younger members took the initiative—this apparently for the purpose of offering them an opportunity of freely expressing their views uninfluenced by those of the older members. And even the "probationers" or disciples who sat as learners in the council-hall, could speak on behalf of the accused. Says Mendelsohn on this head: "The deliberations must be opened with an argument for the defense, and by one of the younger judges."[4] He adds: "The judge who is vascillating in his opinion needs give no reason for his indecision, but those who express decided opinions must furnish the grounds for their opinions, which the secretaries carefully enter on record."[5]

The same author goes further into the intricasies of the Hebrew system: In counting the votes the following particulars must be observed. Where the records disclose that several judges have advanced one and the same argument, but each supported it by different Scriptural dicta, their opinions are considered together as one. Father and son (the latter a "probationer"), teacher and pupil "count also as one."[6] He explains:

"The seats of the Synhedrion were arranged in a semi-circle,—the president occupying the middle seat,—so that all the members could see each other at a glance. Facing them were three rows of seats, occupied by probationers";[7] that is, disciples. These

4. "Crim. Jur. of Anc. Heb.," p. 141. Sanh. 32a, 36a. Maimon. H. Sanh. XI, 6.

5. Id., p. 142. Sanh. 34a. Maimon. H. Sanh. X, 1.

6. Id., p. 144. Tosefta Sanh. III, Sec. 8. Sanh. 34a, 36a. Maimon. H. Sanh. XI, 7.

7. Id., p. 100. Sanh., 36b. Maimon. H. Sanh., I, 3.

disciples came up by degrees from membership in the lower tribunals, after becoming "ordained disciples."

Chandler, citing Benny,[8] similarly recites the mode of voting, adding: "Judges who had voted for acquittal on the first day could not change their votes on the second day. Those who had voted for conviction on the first day might change their votes on the second day, by assigning good reasons"; but could not vote for conviction on the second day, if the reasons given on that day were "radically different from those assigned on the first day."[9] The vital significance of the records kept by the scribes, or secretaries, is seen in these very important distinctions which were so essential under the Hebrew code.

But the opinions expressed, and the votes given by the judges were to be kept secret. To again quote Mendelsohn: "All the participants in the debate are strictly enjoined not to divulge the opinions of the different members of the court, nor the names of those who voted for or against the accused."[10] But Caiaphas' exclamation divulged his opinion, and determined, if indeed it did not express, his vote. And as his "What think ye?" seems to have brought, upon the instant, a response in the voice that "all condemned Him to be guilty of death," it would seem to have been out of the question for the scribes to have recorded the individual votes, not to mention the registering of the specific reasons for each member's vote.

Again: This condemnation was no legal pronouncement of a verdict. "When a verdict is arrived

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8. "Crim. Code of the Jews."
9. "Tr. of Jes.," Vol. 1, p. 167.
10. "Crim. Jur. of Anc. Heb.," p. 150. Sifra Kedoshim, Sec. 4. Sanh., 29a.

at, the accused is brought before the bar, and the Chief of the court declares it. If that verdict is in the prisoner's favor, acquitting him on the charge, he is at once liberated; if, on the contrary, he is found guilty, then he is straightway led forth to execution."[11] So far as the Gospel record shows, Caiaphas did not declare to Jesus, or at all, what the verdict was.

Nor was it a rendition, or pronouncement, of judgment, for any specific crime. The two Evangelists' account should, we think, be construed in this connection in one of two ways: Either Caiaphas himself, in ejaculating "He hath spoken blasphemy,"[12] thereby *adjudged* Him guilty of that crime, as far as mere words could do so, and the members, in condemning Him "guilty of death,"[13] pronounced an indefinite sentence as though following Caiaphas' verdict; or else the chief priest's utterance was but a mere charge of blasphemy, which must have been investigated, but which was not examined into in any other sense whatever than by using Christ's "I am"[14] as proof of the charge. In either view, it seems that no lawful judgment for blasphemy was accomplished.

Rosadi, reasoning upon the effect of the transaction before the Sanhedrin, says: "But the condemnation made no mention of any species of capital punishment. This in itself would suffice to make clear the view which has already been advanced—namely, that this pronouncement was no regular verdict, but simply a charge which alone could be deliberated

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11. Id., p. 148. Sanh., 79b. Maimon. H. Rozeah, IV, 7. H. Sanh., XIV, 7.
12. Matt., 26; 65.
13. Id., 66.
14. Mark, 14; 62.

upon by the Sanhedrin."[15] He then indicates that he regards the statement "they all condemned Him to be worthy of death" as no legal condemnation, "especially if we reflect that there is a complete absence of any indication as to the species of punishment." And after detailing the various modes of capital punishment under the Hebrew law, including that of stoning for blasphemy—and which was not specified in the proceedings before Caiaphas,—he concludes: "Meanwhile, we have this two-fold truth: that the Sanhedrin inflicted upon Jesus no punishment, and that which He later underwent was not amongst those which the Sanhedrin was able to apply. This is enough to corroborate the fact that Hebrew judges could not, and did not, condemn the prisoner from Nazareth."[16]

We have already expressed dissent from his conclusion that they could not legally convict. But that they did not formally convict, nor pronounce a legal sentence, seems substantially clear upon the proceedings and the law involved.

15. "Tr. of Jes.," p. 200.
16. Id., p. 211.

CHAPTER XIX

Two Sanhedrist Sessions, or Only One?—What This Question Involves—St. Luke's Seemingly Variant Account—Evidences Substantially Show Two Meetings Held—The Quorum—Same Irregularities at Both—Informal Verdict at Morning Session.

WE will now discuss the important and, at first blush, doubtful question whether there were two meetings—however informal or otherwise—of the Sanhedrin, or only one, between the arrest and the taking of Jesus before Pilate.

This question involves also the vital point, whether the second meeting, if there was one, was in the nature of a new trial,—that is, for the purpose of confirming, or of setting aside what had been done at the preceding performances before the Sanhedrists.

In reaching conclusions upon this question of fact, the seeming variance of St. Luke's account from those of Matthew and Mark, and, in some respects, of St. John also, must be critically considered.

Now, while both of the two first Gospels relate that testimony was heard, and in the night time, followed by condemnation,[1] and that early in the morning the chief priests with the elders and scribes held a consultation,[2]—this last seemingly referring to a *second* Sanhedrin meeting—St. John makes all to occur by

1. Matt., 26; 57-66. Mark, 14; 53-65.
2. Matt., 27; 6. Mark, 15; 1.

night,[3] but says nothing of the Grand Council, or of any determination of the case. And St. Luke's narrative[4] shows Jesus taken in the night to Caiaphas' palace and there maltreated by His custodians, where also occurred, at night, Peter's denials, and and that at daybreak He was "led away" into the assembly of the Sanhedrists, where, without resorting to witnesses, He answered affirmatively the question whether He was the Son of God.

But it will be noted, that St. Luke relates that thereupon "they said, what further need have we of witnesses?"[5] (22;71). This would seem to indicate that he knew that some resort to witnesses had already been had since the arrest, at least in Caiaphas' palace, "the high priest's house." And while he does not locate in any particular hall or apartment the place to which "they led him away into their council,"[6] yet this language indicates a council room. And it is evident, from his recital that "as soon as it was day, the assembly of the elders of the people was gathered together, both chief priests and scribes," that there was another, or different coming together of parties after the occasion of Jesus' being brought "into the high priest's house."[7] This conclusion that St. Luke records a second meeting at some usual meeting-place of the Sanhedrin, is strengthened by his statement that after Jesus had confessed Himself to be the Son of God "the whole company of them rose up."[8]

Rosadi reasons in favor of St. Luke's substantial

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3. John, 18; 13-24.
4. Luke, 22; 54-70.
5. Id., 71.
6. Id., 66.
7. Id., 54.
8. Luke, 23; 1.

accord with the other Evangelists concerning the morning meeting being a second one: "It is true that the Evangelist, while dwelling on these matters only mentions the meeting of the Sanhedrin in premising that it was then already day, but if it be considered how brief and hurried is the mention that he makes of that meeting, it may be admitted without difficulty that it could only have been the second meeting which, according to the other Evangelists, was held after the condemnation, and that the first meeting was not noticed by St. Luke, as he thought it sufficient to record the fact of Jesus having been sentenced to death in mentioning the second conference of the Sanhedrin." That, as the others refer to two meetings, this Evangelist "must certainly have omitted to mention one of them."[9] That, therefore, "unless we are prepared to set aside the explicit testimony of three witnesses, notwithstanding the evident omission made by a fourth (St. John), the affirmation that the trial of Jesus was held at night in violation of the express prohibition of the Mosaic law must be fully maintained." That he omitted the first or night meeting, since "the transfer from the Sanhedrin to the Pretorium was immediate," that it is therefore evident that no third meeting was held, and so it was the first meeting at which condemnation was had, not "the subsequent consultation for the purpose of delivering Him over to Pilate." That St. Luke announces no condemnation, nor does he make Caiaphas the interrogator, "whereas according to the narration of the other Evangelists concerning the first meeting of the council the examiner was the high priest—as it should have been." And that he mentions not the two false witnesses, nor the adjuration, nor the rending of gar-

9. "Tr. of Jes.," pp. 155-157.

ments.

Chandler[10] regards the morning session as a Sanhedrist meeting occurring "about three hours after the close of the night session * * , that is about six o'clock in the morning," but is uncertain whether it was "a regular trial or an informal gathering"; cites authorities holding it to have been a mere prolongation of the night trial, "perhaps with a brief recess," for consultation concerning execution of sentence already pronounced. He, however, takes decided exception to this view, urging upon "the greater number of reputable authorities that the second sitting was in the nature of a second trial." He regards this difficulty as turning upon St. Luke's account, who "describes a regular trial"; says that if he refers to the earliest trial mentioned by Matthew and Mark, "then we have only the brief notices in Matthew 27;1, and in Mark 15; 1, concerning the morning session, which indicate only a very brief and informal meeting of the Sanhedrin at daybreak"; whereas, if Luke's account refers to said daylight meeting, "then we have received from the third Evangelist a description of a regular trial at the second session of the Sanhedrin." He quotes at length Andrews' view,[11], who finds in Luke's account no formal trial, and who regards the interrogation whether Jesus is the Christ as plainly pointing to "the result of the former session," and that the position given by Luke to the insults, etc., leaves "no doubt that they are the same mentioned by Matthew and Mark as occurring immediately after the sentence had been first pronounced"; from which Andrews concludes it probable that this meeting was a morning session "convened to ratify formally what

10. "Tr. of Jes.," Vol. 1, pp. 356-361.
11. "Life of Our Lord," pp. 523, 524.

had been done before with haste and informality." Chandler then observes, with much force, that it is "very easy to reconcile" the seeming discrepancy between Luke's reference to a day meeting and the "striking resemblance" to the night proceedings reported by the other two, by reference to Hebrew law, requiring a virtual repetition on a second trial. "The morning session * * was intended, therefore, to give a semblance of legality and regularity to this requirement"; in which, he says, the Sanhedrin failed, in that the second should have been, but was not had on another day, etc.

The Gospel narratives, on the whole, seem to establish with substantial historical certainty, that there were two occasions of assembling of the Sanhedrists, —one in the night, at which what purports to have been the semblance of a condemnation of Jesus was had, the other early in the morning but at or after dawn, at which some ostensible confirmation of a previous conviction was attempted.

Of the morning meeting, all that Matthew records is, that "all the chief priests and the elders of the people took counsel against Jesus to put him to death,"[12] after which He was bound and delivered up to Pilate. And by Mark, that "the chief priests with the elders and scribes, and the whole counsel, held a consultation, and bound Jesus,"[13] etc. While Luke (assuming that he refers to this meeting) says "the assembly of the elders of the people was gathered together, both chief priests and scribes; and led Him away into their council, saying, If Thou art the Christ, tell us;" followed by His protestation that they would not believe, etc., "But from henceforth shall the Son of man

12. 27; 1.
13. 15; 1.

be seated at the right hand of the power of God." "Art Thou then the Son of God?" they all asked. He said "Ye say that I am." They said "What further need have we of witnesses? For we ourselves have heard from his own mouth."[14] We have seen that St. John takes no notice of the morning meeting; his narrative indicating that the parties having Jesus in charge took Him directly from where He was first taken before Caiaphas, to Pilate: "They led Jesus therefore from Caiaphas into the palace." (18; 28).

These accounts indicate, and the general view is that the Sanhedrin had at the morning meeting at least a quorum present.[15] The writers in general conclude that substantially the same irregularities occurred as at the night meeting,[16]—absence of witnesses, unanimity as to condemnation, the precipitate character of the "consultation." The record seems to fail to show a formal verdict announced, or voted. Such a verdict, according to Freidleib (cited by Chandler), would have been: "Thou, Jesus, art guilty." Chandler's conclusion[17]—based in part upon Mark's acount of the night trial, "which the morning session was intended to confirm,"—that a formal verdict was pronounced, may perhaps be justified, on the whole record.

It is far from clear to the present writer, that those friends of Jesus, Joseph of Arimathea and Nicodemus, and who may probably have been members of the Sanhedrin, joined in His condemnation

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14. Luke, 22; 66-71.

15. Rosadi, "Tr. of Jesus., pp. 153, 154. Chand. "Tr. of Jes.," Vol. 1, pp. 283, 356. Matt., 27; 1. Mark, 15; 1.

16. Rosadi, "Tr. of Jes.," p. 160. Chand., "Tr. of Jes.," Vol. 1, p. 362.

17. "Tr. of Jes."

at either of the sessions in question. We regard it as extremely doubtful whether they or either of them was present. Chandler's conclusion that "the plain language of the Scriptures indicates" that they were both present at "both trials"[18]—assuming that there were two,—is dissented from, though with much diffidence. The use of the word "all" in the Gospels is not, in our view, conclusive proof that the whole seventy-one members were present. It may well have meant that "all" of the three constituent elements, or Chambers, were present, or represented. The uncertainties on these heads as to the night meeting seem to obtain in almost an equal degree, as regards the morning gathering.

18. Id., Vol. 1, p. 364.

CHAPTER XX

Morning Session Illegal, Postponement Necessary—Authorities and Reasons Therefor—Hebrew Criminal Procedure on Review—Sentence, Execution, Resumption of Proceedings on Review—Not a New Trial—New Vote Taken—Execution, Death March Under Hebrew Law—Modes of Hebrew Execution—Morning Sacrifice, Was it Observed at Morning Session? Was This Point Vital?

BUT whatever the character of the morning session, it is clear that if regarded as a review, or new trial of the case, it was an illegal act.

The Hebrew law required, in case of conviction on a first trial of a capital charge, that a postponement of all further action be had for one day at least, before a final judgment and sentence upon which execution was enforceable could be pronounced.

Says the Mishna: "A criminal case resulting in the acquittal of the accused may terminate the same day on which the trial began. But if a sentence of death is to be pronounced it can not be concluded before the following day."[1] The Pirke Aboth thus enjoins: "Be cautious and slow in judgment, send forth many disciples, and make a fence around the law."[2]

The Hebrew regard for human life was expressed in such aphorisms as these: "Man's life belongs to God, and only according to the law of God may it be

1. Mishna, Sanh., IV, 1.
2. Mishna, "Capita Patrum," I, 1.

disposed of." "Whosoever preserves one worthy life is as meritorious as if he had preserved the world." These were judicial maxims, the spirit of which at least bound the judges. Again: "The Sanhedrin which so often as once in seven years condemns a man to death, is a slaughter-house"[3]—a maxim celebrated in that jurisprudence.

We have already noted the point that, under the Hebrew law, one day ends and the next commences at sunset; and that all of these proceedings, from the arrest forward, occurred upon one and the same day in law. Also that the day on which the condemnation and crucifixion of Jesus occurred was that of the Passover,—a holiday.

Rosadi declares: "The Mosaic law not only prohibited capital sentences being pronounced at night, but forbade with the same rigor and for the same reason that sentence should be pronounced on the same day as that on which the trial began;"[4] stating the reason given in the Mishna for this rule, as being "the hope that some argument may meanwhile be discovered in favor of the accused." He severely arraigns the judges for openly violating this provision, and urges, notwithstanding the next day was Easter, that the proceedings "might have been suspended," instead of violating the rule in question "in order to respect a merely superstitious observance—that of sanctification of Easter."

The Jewish authorities unite in making clear the procedure as to the necessary adjournment. Mendelsohn says: "When the court is so divided that no effective verdict of acquittal can be given on that day, it adjourns to the next day. Meanwhile the

3. Mishna, "Treatise Makhoth." See Chand., "Tr. of Jes."

4. "Tr. of Jes.," p. 160. Sanhedrin, 32. Mishna, p. 8.

judges may partake of food, but must drink no wine whatever. They may retire from the courtroom, but not to rest. In the privacy of their closets they must either by themselves or with their colleagues, continue to study the questions at issue. Early the next morning they must again be in their seats * * and proceed, in the manner described, to dispose of the case."[5]

And concerning the reargument of points involved in the case, Mendelsohn states the rule we have heretofore mentioned: "Any one who has previously expressed himself as favoring conviction, but subsequently changes his opinion, may state his reasons for the changes; but he who has spoken in favor of acquittal, if he changes his opinion, is not allowed to give his reasons."[6]

And if, on recounting votes, upon the review or second trial, it appears that no effective verdict is found, the number of members is increased as has heretofore been explained. Mendelsohn adds, in a note, citing Hebrew authorities: "All the arguments must be restated. If any one who has spoken in favor of acquittal has become confused, the secretaries extricate him by means of the record; but if he is one who has argued in favor of conviction, no such assistance is rendered him. He is left to extricate himself as best he can; and when it is proved by the record that he now argues from a different standpoint, the case must be adjourned for another day."[7]

The procedure under the Hebrew law, on the sec-

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5. "Crim. Jur. of Anc. Heb.," p. 145. Tosefta Sanh., IX, Sec. 1. Sanh. 40a.

6. Id., pp. 145, 146. Sanh. 34a, 40a.

7. Id., p. 145, note 345. Tosefta l. c.; Yer. Sanh. V, end, p. 23a.

ond day, was not, however, a new trial in the sense of the English and American procedure—on which evidence was introduced as though no previous trial had been had. It was rather a review of the previous proceeding. Chandler[8] characterizes the second trial as "a proceeding in the nature of an appeal," involving a review. Newly discovered evidence was admissible, however. But more stress was laid upon the fixed opinions of the judges, on this second proceeding, than upon the facts in the case. The prisoner was again brought in, witnesses again produced. "The scribes, bringing with them the minutes of the former meeting," were again seated. A new vote was taken. And we have already referred to the rule of rejecting votes based upon different reasons than those expressed at first, and that the only change allowed to individual judges was that from conviction to acquittal, etc.

On the second trial, or ballot, if there was a majority of two, conviction followed. Sentence was deferred, deliberation continued. All remained and fasted the second day. Ancient maxims of the Fathers were reconsidered, merciful Talmudic interpretation was invoked and pleaded by the judges, defenders of the accused. The moment that saw judgment finally pronounced witnessed the beginning of the execution. At sunset was the time for both.[9]

Then occurred the death march—a proceeding which in its searching analysis of facts, and its merciful and lingering protection of the sentenced but possibly innocent prisoner is unknown to any other system of jurisprudence.

The condemned was led to his doom. A flagman was stationed at the entrance of the Sanhedrin hall.

8. "Tr. of Jes.," Vol. 1, p. 167.
9. Chand., "Tr. of Jes.," Vol. 1, pp. 168, 169.

A mounted officer of court followed the procession at a convenient distance, looking back at the flag. A herald with a crimson banner proclaimed the execution, announced the charge, the name of the defendant and of the witnesses, and exhorted any one knowing anything favorable to the defendant to come forth, etc., "in order that the prisoner may be led back to the Sanhedrin hall to be again confronted and tried by his judges."

If one responded, the procession was halted and the accused was led back to the Sanhedrin. If then any one of the judges thought of a new argument in favor of the accused, he stated it to his fellows. The flag was then waved and the messenger stopped the execution.

The condemned could himself prevent the execution, if he could give the Rabbis escorting him any valid reason why he should not be executed—he was led back as often as he could prove this, but not exceeding five times. If no new witness appeared, and no further plea for life was made by defendant, the procession drew near the place of execution. The defendant was then exhorted to declare himself guilty and to confess his sins. If he refused, he was urged to say: "May my death prove an atonement for all my transgressions." He was then led to execution. The so-called death draft was administered, to produce stupefaction.[10]

10. Mendelsohn, "Crim. Jur. of Ans. Heb.," pp. 154-156. Sanh. 43a, 42a, 42b. Maimon. H. Sanh. XIII, 1. Chand. "Tr. of Jes.," Vol. 1, pp. 169-171. Mendelsohn says that if, after the condemned has once personally endeavored to prevail upon the judges to reverse the case, but without avail, he is then allowed to have "two scholars" accompany him, "and when he again applies for a reconsideration of his case, he is obliged to state his reasons to his learned escort; if these consider them of sufficient weight and importance, he is re-

The prisoner was either stoned, strangled, burned, or beheaded. If the crime for which he was convicted was blasphemy or idolatry, the body was hung after death. Two graveyards were provided for executed criminals, outside of town—in one were buried those who were burned or stoned to death, in the other those who were hanged or beheaded. When the flesh had fallen from the bones the relatives were allowed to remove the remains. Soon after the execution the friends and relatives of the dead man made friendly calls on the judges who had presided at the trial and imposed sentence—to show that revenge was not harbored against them for performing their bounden duty as judges of Israel.[11]

As stoning would have been the mode of execution of Jesus, had the Jews controlled the proceedings—and supposing blasphemy to have been the charge—it may be stated, on the authority of Mendelsohn, that the legal mode of stoning to death was: "The witnesses, having placed their convict on a high platform, precipitated him to the ground. If instant death is not produced by the fall, the witnesses hurl upon his prostrate body a heavy stone; and only when that is not sufficient, the by-standers throw stones at him until he is dead";[12] thus to prevent undue mutilation of the body.

Another matter of law arises in connection with the morning session. The Hebrew procedure pro-

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turned to the court, and heard and judged as before; if not, he is led on to execution." These "scholars" are not, however, "from among the authors of the verdict."

11. Deut. 21; 22, 23. 13; 12-17. 20; 14. 21; 9, 17. Rosadi, "Tr. of Jes.," pp. 202-205. Mishna, 49, 52. Mendelsohn, "Crim. Jur. of Anc. Heb.," pp. 44-53. Sanh. 49b. Maimon. H. Sanh., XIV, 1.

12. "Crim. Jur. of Anc. Heb.," p. 158, Sec. 123.

vided that at day-dawn, and before the Sanhedrin convened in the morning, the Jewish morning sacrifice must be offered.

The Talmud of Jerusalem says: "The Sanhedrin sat from the close of the morning sacrifice to the time of the evening sacrifice."[13] The Mishna contains this comment: "Since the morning sacrifice was offered at the dawn of day, it was hardly possible for the Sanhedrin to assemble until the hour after that time."[14]

Whether this rule constituted a condition precedent to jurisdictional action, so that proceedings taken without first observing it would be reversible error, or whether its non-observance was a mere irregularity, can not be determined upon any Hebrew authority at hand. And while under that theocracy which placed Jehovah at the head of the Commonwealth, and at the same time based the latter directly upon the Godhead, an appeal to the Deity for judicial guidance would be the very essence of official action, yet we find no warrant in the Hebrew law for concluding that no legal session of court could be held if that ceremonial was ignored.

The fact that the one hour, or thereabouts, of sacrifice began, theistically, at daybreak, does not seem to bear out Chandler's view that "a session of the court before the morning sacrifice would, therefore, have been a meeting at night."[15] His authority for so holding is the learned MM. Lemann, who construe the Hebrew writers to mean that "no session of the court could take place before the offering of the morning sacrifice." But, with or without the

13. Talmud of Jerusalem, Sanh., I, fol. 19.

14. Mishna, "Tamid, or of the Perpetual Sacrifice," C. III. MM. Lemann, "Jesus Before the Sanhedrin," p. 109.

15. "Tr. of Jes.," Vol. 1, p. 261.

sacrifice, a court convened at or after daybreak would not necessarily have been a night session, either in law or fact. Chandler assumes that the Sanhedrin "convened before the offering of the morning sacrifice," and alleges error on the authority last above quoted. He declares that the morning sacrifice was not offered on the occasion in question, because the whole Spiritual account "shows that it could not have been offered." The silence of the Evangelists on this head, coupled with other evidences of hasty and surreptitious action by the Sanhedrists, seem to justify belief that no such ceremony was performed.

Chandler deems it probable that such sacrifice was in law "an indispensable prerequisite to the assembling" of the Sanhedrin "for the transaction of any serious business," that otherwise the rule would be meaningless. But he frankly asserts that it "is not positively known what legal connection, if any, the morning sacrifice had with the trial of a capital case" before the Sanhedrin, and the writers are divided in opinion.

The Hebrew morning sacrifice was, almost beyond doubt, offered in the sense of recognition of and an appeal to Jehovah, for strength and guidance in the performance of the high duties of that body whose functions extended throughout the whole domain of statehood—of which the judicial power was but one. That such offering, with attendant prayer, was enjoined by law in Israel as a sacred duty, falls short of proving that, without such preliminary ceremonial, all acts of the Sanhedrin performed on the day of such omission were invalid. Courts in all times, in furtherance of justice, have taken from mandatory language its imperative effect, and have given it an advisory or permissive meaning. We are not aware that a descent to antiquity has discovered

an age whose judiciary wholly ignored that rule of construction of statutes.

If it were known—as we regret to have to declare it is not and can not with reasonable certainty be known—how far these and some other laws of procedure, which were doubtless once and for long time in force in Israel, were judicially regarded as binding in Christ's time, a safer and more just conclusion could be reached as to the degree of judicial error entering into this, the sublimest and, as affecting humanity at large, most important transaction of the ages.

CHAPTER XXI

Christ's Divinity an Issue Under Mosaic Law—Chandler's Theory Criticised—Jesus as Merely "Jewish Citizen" an Evasive Plea—Question was, Is Jesus, Claimant to Divinity, a Blasphemer Under Hebrew Law?—Competency of Sanhedrists to Try that Issue under Mosaic Tests—"Forum of Conscience" in Juridical Procedure.

AT the bottom of the whole subject concerning Jesus' trial is a question of His status as a supplicant for justice before the Sanhedrin. That question also involves the competency of the Sanhedrin, and that of the Mosaic Law itself, to deal with the Accused in His real character of claimant to divine power, and to Messianism. Concerning this latter point, we are unable to coincide in the seeming assumption of Chandler.

In other words: Chandler, in discussing the attitude and conclusions of Simon Greenleaf, the renowned writer on the Law of Evidence, and author of "Testimony of the Evangelists."[1] wherein the latter declares that Jesus' conviction, if He is regarded "simply as a Jewish citizen," was seemingly "substantially right in point of law, though the trial were not legal in all its forms"—expresses a similar conclusion.[2] And both seem to recognize the Old Testament and other Hebrew literature as decisive

1. p. 562.
2. "Tr. of Jes.," Vol. 1, pp. 209, 210.

on that head. Their conclusions are based upon admissions and claims of His possession of divine power, made by Jesus, which these writers declare were prohibited by the Decalogue and by Deuteronomy,[3] etc.

But, while both writers appeal to the higher claims of Jesus, to-wit, His divinity, as being involved in the trial, yet Chandler recedes from the idea of the competency of the Sanhedrin to determine Jesus' claim. Again! His postulate that the legality or otherwise of those proceedings is matter of form, rather than of substance, seems untenable. We reproduce his own language: "Fortunately for the purposes of this treatise, the legality or illegality of the proceedings in the trial of Christ is not so much related to the question of substance as to that of form. Whether Jesus were God or not is a question involving His divinity, and is a problem peculiarly within the domain of the theologian. Whether legal rules were duly observed in the trial of Christ, were He man or God, is a question involving His civil rights, and belongs to the domain of the lawyer. Unless this distinction be recognized and held in mind, the treatment of this theme from a legal standpoint has no justification. This contention is all the more certainly true, since proof of the divinity of Jesus, a spiritual problem, would rest more upon the basis of religious consciousness and experience, than upon historical facts and logical inferences."[4]

Then, after recognizing the fact that the "historical proofs" of Christ's divinity manifest during the Christian era thus far, were not before the Sanhedrists, and that His own disciples had doubted His divinity, Chandler, while disclaiming a desire "to palliate or

3. Id., p. 209.
4. Id., pp. 210, 211.

excuse" the Sanhedrists for illegal conduct, and suggesting the futility of attempting to settle the question of Christ's divinity, concludes: "The question, after all, is one to be settled in the forum of conscience, illuminated by the light of history, and not at the bar of legal justice."[5] And then, reverting to Greenleaf's conclusion as to the "kind of law" meant by him, he says: "Ancient Hebrew law is meant, and as that law was interpreted from the standpoint of ancient Judaism."[6] He adds, that the policy and precepts inaugurated by Jesus can not be regarded as legally binding upon the Sanhedrists, "since the very claims of Jesus to Messiahship and identity with God were to be tested by the provisions of the Mosaic Code and in the light of Hebrew prophecy. The Pentateuch, the Prophets, and the Talmud were the legal guides, then, of the judges of Israel in judicial proceedings at this time, and furnished rules for determining the genuineness of His pretensions." In the course of his discussion on this head he also recognizes that there is "much truth in the contention" that to regard Jesus, for the purposes of His trial, as "merely a man" or a "Jewish citizen" is "begging the question" and an "inexcusable evasion," since if Jesus was God "manifest in the flesh" He was not guilty, if He was not, He was guilty.[7]

But, if the legality of His trial involved "His civil rights"—by which Chandler doubtless means His rights under the Hebrew laws so emphatically relied upon by him as being "the legal guides"—then why was not His guilt or innocence under His claim of Sonship of God, and the Messiahship determinable by the Sanhedrin in proper session and in

5. Id., pp. 211-213.
6. Id., 213, 214.
7. Id., p. 210.

due course of Hebrew procedure? Why relegate the question to the forum of conscience, and deny its submission to the bar of legal justice? If he regards Jesus' "civil rights" as limited to *such* claims as He could make as "merely a man," may there not be some force in the criticism that such a theory is here, too, an evasion?

The *case* presented—or at least presentable to the Sanhedrin, necessarily involved at last this issue: Is Jesus, claimant to Sonship of God and the Messiahship—claimant to Divinity,—is He a blasphemer under the Hebrew Law, or is He not.

And if that law, adminstered by that tribunal—itself highest regent of Jehovah in that Theocracy of Israel descended from Moses the Law-giver—could not legally deal with that issue and *determine* it in the time of Christ, so far as regards trial and sentence, then why all the controversy of this Era upheld by those who embrace the theory that Rome had not deprived Judea of jurisdiction to *try* capital causes,—why that controversy over the alleged illegality of the trial for *irregularities?* Why cite the Pentateuch, the Prophets, the Talmud? Why undertake to *discuss* the question of supposed errors of Sanhedrists who had no law and no jurisdiction under which to approach the issue of divinity?

But, was the vital issue of Jesus' divinity—an issue without whose consideration His trial on any theory would have been a farce,—was that question, "a spiritual problem," one the regular determination of which "is not so much related to the question of substance as to that of form?" Did not the point "whether legal rules were duly observed" on His trial involve that question among His "civil rights?" The Mosaic Code was nothing on its religious side if not calculated and fit to deal with "spiritual problems," and to render judgment thereon. And what

problem is attacked under that procedure, in such a trial, when descent is made to evidence involving "the Mosaic tests," if not one that is spiritual? Yet to those "tests" Chandler repeatedly alludes in discussing at large the legal duties of the Sanhedrists upon the trial of Jesus.

Justice to that able author, who has gone into this general subject more exhaustively, perhaps, than any other writer, demands recognition of the fact that his discussion in the particular connection here being considered, is in the nature of an apology for refraining from attempting the "futile task" of settling the question of Jesus' divinity in a treatise, however, elaborate. In a sense all writers, and all who think upon the subject readily recognize that the task of settling that question is futile.

But is "the forum of conscience" any other than that joint faculty of heart and head which all jurors in modern times, and all judges among the ancients who possessed the added function of juror, were bound to exercise in comparing evidence and law in arriving at a verdict? But those Hebrew judges were not bound to *settle* the question of Christ's divinity. The question demanding settlement in His case was, Is there substantial, reasonable *doubt* of His guilt, under such evidence as His prosecutors on one hand, and Himself, or we as His judge-defenders may bring forward in His behalf on the other, and under the Mosaic Law and the Prophets? Is there reasonable *doubt* of His divinity? As a civil *claimant* He could demand such verdict. The determination of the claim involved the exercise of the selfsame human faculties which the investigator of to-day, in the forum of his conscience, must and does draw upon in determining for himself the selfsame question. We all go in the flight of *thought* to Palestine, and think upon what Jesus

was, by tracing out in the *Gospels*— the evidence which, through the Evangelists, were at hand[8] when that fateful tribunal acted, what He taught and what He did in His ministry,—then we ask ourselves, Is this so, or is it not so? Had not those headed by Caiaphas the power to do this? Should not they have exercised that power?

What true lawyer to-day but appeals to the "forum of conscience" in the twelve men who, under the law and the evidence, must juridically "settle" the question of life and death? Would he balk in making that appeal were the defense one involving a claim of some occult—some divine faculty of the prisoner at the bar? Would the instinctive resort of the jurors to conscience be less urgent because such phase of a defense confronted them? On the contrary, we believe that—within the limits which exclude the mere mountebank—the more extraordinary the claim of supernatural power, in accounting for a given act

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8. While "The most perfect proof of the divinity of Jesus is the fact of his resurrection from the dead" (as stated by Chandler in this connection, p. 212), which proof "was not before Caiaphas and his colleague," yet we conceive that to eliminate, in contemplation, the element of the resurrection, would not result in destroying belief in the divinity of Jesus based upon His life, His perfect sinlessness, His divine precepts, His fearless denunciation of evil and His evident mission of regeneration of mankind. The facts dealt with in the opening chapters of this study seem, indeed, to make it apparent that His persecutors themselves believed that Jesus had convinced many of His followers that He was the Messiah. And it is believed that consideration of the life of Jesus, as above indicated, appeals to "religious consciousness and experience"—which consciousness and experience Chandler declares tend more to "proof of the divinity of Jesus" than does consideration of "historical facts and logical inferences." ("Tr. of Jes.," Vol. I, p. 211.)

under investigation, the more certain, as it would be the more necessary to due performance of a juror's duty,—would be the exercise of conscience in the process of analyzing the claim thus set up.

The present writer is unable to construe the substance of Chandler's treatment of this phase of the subject in any other sense than that of a virtual abandonment of the legal tenability of determining Christ's divinity, under the Hebrew law and procedure, notwithstanding his splendid and seemingly successful effort to prove that the Code dealt with the spiritual elements involved, and that it conferred upon the Great Sanhedrin jurisdiction to enforce its provisions wherein they pertained to the case of Jesus. The question regarding deprivation of that jurisdiction, by the Roman power, was not referred to by Chandler, in his discussion now being considered.

Greenleaf, at the point above indicated, declares: "It is not easy to perceive on what ground His [Jesus'] conduct could have been defended before any tribunal, unless upon that of his supernatural character. No lawyer, it is conceived, would think of placing his defense upon any other basis."[9] Chandler declares that Greenleaf has here, and in his language first above quoted, "tersely and admirably summarized the matter from the lawyer's point of view."[10] Yet the burden of demonstrating error on the part of Caiaphas and his fellows, in illegally condemning Jesus in view of His Messianic claims, is of the very essence of the labors of both those commentators. And it would seem that both, in assuming the legal attitude indicated by the above quotations, necessarily recognize, either that the Sanhedrin could legally consider the question of

9. "Testimony of the Evangelists," p. 562.
10. "Tr. of Jes.," Vol. 1, p. 209.

Christ's divinity, or that the defense of divinity was absolutely inadmissible "before any tribunal," including of course the Sanhedrin—which latter alternative would acquit these judges of all error on this head.

CHAPTER XXII

Christ Before Pilate—In Pretorium on Zion Hill—Pontius Pilate, a Spaniard, His Morals, His Procuratorship—Contemporary Historical Estimates Compared with Evangelists—His Oppression of the Jews—Their Hatred of Him.

WHERE, in Jerusalem, was the Pretorium of Pilate?

Some uncertainty exists upon this head; but the evidences seem to raise the single point of fact—whether it was on Zion Hill in the southern part of the city, or over towards the northern part in the Castle of Antonia, at the northwest corner of the Temple Area. It is believed that the great preponderance of evidence emanating from the historians and the writers, is in favor of the claim that his official establishment was on Zion Hill; and we regard this as substantially established.

The Procurator's official domicile during the Paschal Feast was in all probability in the Palace of Herod on Zion Hill. We have seen that the Palace of Caiaphas, located with reasonable certainty on Mount Zion, was the place at which the proceedings already had, occurred. St. John says that Jesus was led "from Caiaphas into the hall of judgment." (18; 28) and this hall, which had been Herod's palace, was now known as the Pretorium of Pilate.

Chandler finds that while its location is not certainly known, it may have been in the Castle of Antonia, the fortress towering above the Temple courts; but regards it much more probable that it was "the magnificent palace of Herod, situated in the north-

west quarter of the city,"[1] this being probable from the known customs of Roman officials to occupy the capitols of the local kings. But his reference to the "northwest quarter" doubtless means, not the city at large, but the "Zion City of David"; since Herod's palace is understood to have been in that quarter of the Hill of Zion, that hill being in the southwestern part of Jerusalem. Rosadi's view is the same: "Pilate occupied the palace of the Herods on the hill of Zion, which we know from Flavius Josephus had been occupied by his predecessors."[2] He adds, that Pilate's tribunal (the Greek bema) was in the open air, "on the spot called Gabaatha from the kind of pavement formed by the stratum of the soil." (St. John 19; 13). Farrar asserts that it was located "in the Upper City and southwest of the Temple Hill."[3]

We conceive that further reason exists favoring its location somewhere on Zion Hill rather than in Antonio's Castle. To have gone from Caiaphas' palace—which we have seen was on Zion Hill and, without much doubt, only a short distance east of Herod's Palace—over through the valley and beyond the Temple on Mount Moriah to the Castle of Antonia, would have been a comparatively long course, and would have taken Jesus and His captors through the principal and most public thoroughfare, which on that Passover day was already thronged with pilgrims and visitors. They would thus have had to pass close by the gates of the Temple, where it is certain that a great concourse of the people of the city and vicinity were congregated, many of whom knew Jesus, and among whom were

1. "Tr. of Jes.," Vol. 2, p. 96.
2. "Tr. of Jes.," p. 233.
3. "The Life of Christ."

disciples but a few who believed in and would have sympathized with Him—or even sought to rescue Him if they had seen Him under arrest. The fact that no hint is given by any of the Evangelists of a discovery of Jesus by the multitude while the priests were arguing at Pilate's quarters, seems to favor the belief that the transfer to Pilate involved but a short walk from one point to another in the southern part of the city on Zion Hill.

Edersheim states that the course pursued was "from the Palace of Caiaphas to the Palace of Herod," which took them "from the eastern slope of the city to the northwest angle of the Upper City," that is the City on Zion Hill. Stalker says Herod's palace was "on the hill southwest of the one on which the Temple stood," and was large enough "to contain a small army."[5] It consisted of two colossal wings springing forward from a building which connected them, and the broad pavement of "Gabatha" was in front of this connecting building.

"And the whole multitude of them arose and led Him unto Pilate," says St. Luke.[6]

And who was this Pilate, whose name seems to hover over the romance of the Messiah like a miasmic vapor above a beautiful landscape?

Pontius Pilate, sixth Roman procurator of Judea, was a native of Seville, a Spanish city enjoying the right of Roman citizenship. His father Marcus Pontius, who upon the subjection of Spain through wars in which he served Agrippa against the Cantabrians, had "commanded the troops of renegades who turned their arms against their commanders in

4. "The Life and Times of Jesus the Messiah," p. 568.
5. "Life of Christ," pp. 47, 48.
6. 23; 1.

servitude, the Asturians"—obtained the pilum (javelin) as a mark of distinction, and from it the family took the name of "Pilate," says Rosadi.[7] The son joined Germanicus in the German campaigns, and "after the peace he came to Rome in pursuit of pleasure, and this pursuit did not bring him fair repute. But his regal marriage with Claudia earned him the dignity of procurator of Judea." Claudia's mother Julia was Augustus' daughter, and who, "after being married to Tiberius as her third husband, was sent into exile by her father on account of her dissolute life." In exile she had borne Claudia to a Roman knight, "by whom she was brought up," relates the same author. The Spaniard Pontius Pilate met her in Rome when she was about sixteen years of age, "and having cast a servile rather than a lustful eye on Claudia, whose upbringing and habits he well knew, and having found his way into the inner favor of Tiberius, he asked her in marriage. Tiberius gave his consent, but, says the story, when Claudia issued from the temple as a bride and when Lucius Pontius wanted to follow her in the imperial litter, Tiberius * * held him back, and drawing a paper from his bosom, handed it to him and passed on. It was the order to proceed to Jerusalem and thence to Cesarea, as procurator of Judea."[8]

Rosadi further portrays him: "Lucius Pontius was the son of a renegade soldier; he himself was a renegade husband. He inherited the servility of his father, who had great ambitions at the court of Rome. He was personally tainted by the most shady court intrigues. Conscious as he was of the low origin of his rank, he set about to keep it by the most

7. "Tr. of Jes.," p. 215.
8. Id., p. 216.

strict and unremitting observance of the sole title of his intrigue-won fortunes—lavish subservience to the will of Rome. * * His character, it is true, was reft of every moral sense, if we may judge of it by his deeds, and was prepared for any degree of dissimulation if it advanced his interests. But it contained nothing of that feeble guardedness, nothing of that pusillanimous hesitancy which has become part of most people's opinion of him."[9] Philo and Josephus are cited as leaving "indications of his violent, cruel and tenacious character, capable of boundless hatred as well as of base intrigue."[10] It is believed, however, that some of these touches overdraw the picture on the side of depravity. At the bottom of all else that we shall see in his part in the drama at the Pretorium—wherein he drew his own portrait for all time—appears sympathy and innate tendency to fairness as a judge, in spite of the towering considerations which engrossed ambition and resolved him to maintain power by keeping peace with Tiberius at whatever cost to the doomed Nazarene.

Chandler shows the two opposing lights in which historians and Gospel writers, respectively, have exhibited his character. "Philo imputes to him 'corruptibility, violence, robberies, ill-treatment of the people, grievances, continuous executions without even the form of a trial, endless and intolerable cruelties.' " But the New Testament recorders have through the milder lines they have drawn in his characterization as judge when Christ was before him, portrayed "the man within the governor, with a delicacy, and even tenderness, which made the accusing portrait of Philo and Josephus look like a

9. Id., p. 217.
10. Id.

hard, revengeful daub. * * They have linked conscience to his character and placed mercy in his heart, by their accounts of his repeated attempts to release Jesus."[11]

That Pilate was "virtually a Christian at heart" is Tertullian's opinion. And he was canonized by the Abyssinian Church of Christians. Renan credits him with being a good administrator, and seeks to excuse his excesses towards the Jews on the score of "necessity of vigorous action in dealing with a turbulent and fanatical race."[12] Chandler concludes, after referring to the circumstances of his birth and life, that "all these things had given coloring to the character of Pilate and had stricken with inward paralysis the moral fiber of his manhood. * * Called upon to play a leading role in the mighty drama of the universe, his craven cowardice made him a pitiable and contemptible figure."[13]

A brief reference to Pilate's official action during the years of his procuratorship of Judea is necessary, in order to indicate how these qualities operated upon the Jews.

While his predecessors had refrained from exhibiting emblems of the Roman Empire which were likely to offend Jewish religious sentiments, his garrison soldiers were sent by night into Jerusalem bearing images of Tiberius. To the delegation that went to Cesarea and implored him to remove the standards, he refused. Their persistence for five days so enraged him that he caused them to be surrounded by soldiers and given notice that death awaited them unless they became quiet and dispersed—to which

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11. "Tr. of Jes.," Vol. 2, pp. 88, 89.

12. "Life of Jesus," p. 351. Josephus, "Antiq.," XVIII, II, IV.

13. "Tr. of Jes.," Vol. 2, p. 90.

threat they replied by baring their necks, and "served notice upon Pilate that they, the children of Abraham, would rather die" and would die before they would "see the holy city defiled." He finally yielded and withdrew the standards. In appropriating funds from the Corban, or sacred treasury, to complete an acqueduct for bringing water from the Pools of Solomon—thus ignoring the deep reverence of the Jews for a fund provided for sacred purposes only--Pilate again raised a storm of protest, in the course of which contest he caused soldiers to be disguised as Jewish citizens, "had them armed with clubs and daggers, which they carried concealed beneath their upper garments; and when the multitude approached him to make complaints and to present petitions, he gave a preconcerted signal, at which the assassins beat down and cut to pieces great numbers of the helpless crowds," says Chandler.[14] This engendered renewed hatred.

Again: Shields dedicated to Tiberius were hung in Herod's palace. Remonstrance followed, and indignation deepened, because the Jews believed this was done "less for the honor of Tiberius than for the annoyance" of the remonstrants.[15] Leading men of the nation, including four sons of Herod, petitioned the emperor for their removal; which petition was unavailing. To these acounts of historians, St. Luke (13; 1) adds: "There were present at that season some that told him of the Galileans, whose blood Pilate had mingled with their sacrifices," supposedly alluding to those of Jerusalem.

14. Id., pp. 86, 87.
15. Id., pp. 88, 89.

CHAPTER XXIII

Roman Jurisdiction Over Jesus' Case—Its Relation to Jewish Law and Procedure—"Law of the Province"—Roman Provincial System and Policy—"Procurator Caesaris"—Imperator—Roman Official Corruption—Imperial Criminal Trials a Farce—Tiberius Caesar, His Morbid, Cruel Nature.

WE have heretofore considered at some length the very important question, whether the Sanhedrin in Christ's time could legally *try* Jesus on a capital charge, subject, in a case of conviction, to reversal, or to confirmation and execution of sentence, by the Roman power; and have regarded that right as then still existing, while realizing that the point is one involving some doubt.

That theory is seen to have left Pilate possessed of full power of revision of the case, and of exclusive jurisdiction as regards final action in enforcing capital execution—the *jus gladii.*

And as to the procedure in the exercise of Roman power, it was competent for Roman officials to apply the Jewish mode of trial, so far at least as it was compatible with the spirit and purpose of Roman administration. While this was optional, as regarded imperial power, Roman laws of procedure were of course applicable under the provincial administration. The dominant state could lawfully apply either method of procedure, whether the charge against Jesus were a purely religious one of blasphemy under the Jewish law, or whether considered

as one obtaining under Roman laws.

The same competency would exist in the case of sedition. That crime, when referred to Jewish law, and regarding that law as the municipal basis, might, from the standpoint of Roman sovereignty, consist of an invasion of that sovereignty, in the sense of the adoption of the local (Judean) law by the Empire; while in another sense the same act, regarded as defined by and punishable under Roman law, would, although committed in Palestine, be purely a case of violation of Roman sovereignty under imperial laws.

In any case, Roman procurators and propretors could adjudicate upon the issue by applying either the Jewish or the Roman law, and also the procedure of either jurisdiction, as the case and the practice might require. Greenidge, in his "Legal Procedure in Cicero's Time,"[1] and other authorities, so hold.

And as part of the groundwork of Roman administration, such administrative and judicial regulations through imperial decrees, constitutions, etc., as the Roman authorities might promulgate to change or supplement the Judean laws, would become matter for consideration and guidance, as to both substantive law and procedure.

It would be entirely in keeping with usual administrative practice of conquering powers, for their judicial arm to recognize and enforce the existing municipal laws of the conquered province, or to continue in power native courts having such jurisdiction. Innes, in "The Trial of Jesus,"[2] says: "The Roman governor sanctioned, or even himself administered, the old law of the region." And Schurer states: "It may be assumed that the administration of the civil

1. P. 118.
2. P. 77.

law was wholly in the hands of the Sanhedrin and native or local magistrates: Jewish courts decided according to Jewish law. But even in the criminal law this was almost invariably the case, only with this exception, that death sentences required to be confirmed by the Roman procurator. In such cases, the procurator decided, if he pleased, according to Jewish law."[3] Greenidge declares: "Even the first clause of the Sicilian lex if it contained no reference to jurisdiction by the local magistrate, left the interpretation of the native law wholly to Roman propretors."[4]

Chandler, while recognizing that either Roman or Hebrew law might be applied by Pilate in ordinary cases, "and where the crime was an offense against both the province and the empire, as in the case of murder," is of opinion that "in the case of treason with which Jesus was charged he would apply the law of Rome under the forms of Roman procedure."[5] However, even as regards treason (considered in this discussion as involved in the charge of sedition), we apprehend that, the charge being regarded as having arisen in this case under the Hebraic law, the issue could be determined under Roman procedure and punishment thereby inflicted. And Greenidge is cited as asserting that the Roman edict, by reason of its generality and expansivness, admitted "of an application of Roman forms to the substantive law of any particular city."[6]

In other words, under the imperial system, the subject states were ruled by Roman governors who

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3. "The Jewish People in the Time of Jesus Christ," 1st Div. II, p. 74.
4. "The Legal Procedure of Cicero's Time," p. 118.
5. "Tr. of Jes.," Vol. 2, p. 30.
6. "The Legal Procedure of Cicero's Time," p. 118.

administered the body of laws known as the law of the province (lex provinciae), which was peculiar to each province. This was made up of such parts of the local laws of the conquered state as Rome permitted to remain in force; reinforced by imperial decrees and edicts of the praeters and procurators. In this arrangement, Roman statecraft did not reject the wisdom of ages, which made clear and commendable the policy of promotion of loyalty and tranquility through retention of local laws, and thereby rendering administration less burdensome and more stable. And to such extent was this policy carried, that the rights of subject provinces were little short of those enjoyed by confederate states in Italy itself. Mommsen observes on this head: "In regard to the extent of application, the jurisdiction of the native courts and judicatories among subject communities can scarcely have been much more restricted than among the confederated communities; while in administration and civil jurisdiction we find the same principles operative as in legal procedure and criminal laws."[7] Within the limits above indicated, the arbitrary will of Rome could be exercised against provincial subjects, while in the free or confederated states charter rights, limiting that will, existed; while Roman citizens resident in the provinces "had their own law and their own judicatories."[8]

Under the Roman provincial administration as applied to Judea, did the general rule under the imperial system give way to exceptions as to individual rights? We have seen that great authorities in history and law hold the affirmative.[9] In addition to

7. Mommsen, "Romisches Staatsreght," III. I., p. 748.
8. Chandler, "Tr. of Jes.," Vol. 2, p. 15.
9. Schurer, "The Jewish People in the Time of Jesus Christ," 2nd Div. I, p. 187. Mommsen, "Romisches Staatsreght." Rawlinson, "Ancient Hist."

others already mentioned, we cite Geib, the eminent German writer, who says: "Only one province * * namely, Judea, at least in the earlier days of the empire, formed an exception to all the arrangements hitherto described. Whereas in the other provinces the whole criminal jurisdiction was in the hands of the governor, and only in the most important cases had the supreme imperial courts to decide—just as in the least important matters the municipal courts did—the principle that applied in Judea was that at least in regard to questions of religious offenses the high priest with the Sanhedrin could pronounce even death sentences, for the carrying out of which, however, the confirmation of the procurator was required."[10]

The latin phrase indicating Pilate's official power and station in Judea, *Procurator Caesaris,* meant that he was Caesar's deputy, or administrative representative in that province. The Roman quester, *procurator fiscalis,* possessed merely the functions of the finances. But upon Pilate was conferred the complete executive power over his province, equal to that of the emperor himself[11] And the power of the imperial headship in Tiberius was that unlimited sway summed up in Augustus, his predecessor—who had gathered unto himself all the vast and various powers

10. "Geschichte des romischen Criminal processes."

11. This power is, by Chandler ("Trial of Jesus," Vol. 2, p. 24), ascribed to Pilate by virtue of his official status of *Procurator Caesaris.* However, that title seems not to have conferred, *per se,* criminal competency. Colquhoon, ("Summary of the Roman Civil Law," Vol. 3, Sec. 2394) declares: "The *Procurator Caesaris* possessed, *virtue officii,* no criminal jurisdiction, or at least then only when he filled the place of acting lieutenant, and certain penal matters had been delegated to him in such capacity, as was the case with Pilate in Judea."

of church and state, finding their climax in *Imperator*. The civil wars in which the military giants of Rome were contesting for supremacy and absolute power, which saw Julius Caesar triumphant over Pompey at Pharsalia, paved the way for this consummation by his successors, through the gradual withering of patriotic impulse and the attendant corruption of manners.

An example of official corruption in that age is given by Rollin, who relates the unblushing robbery by Verres, pretor of Sicily, of the son of Selena, sovereign over part of Syria and claimant to the throne of Egypt, who had been sent to solicit the Roman Senate in her behalf,—Verres having despoiled the royal agent of his precious jewels while an ally and friendly guest of Rome, who was "driven away with the highest indignity and violence." Rollin adds, that what Cicero reproaches Verres with in this instance "was the crime of almost all the magistrates sent by Rome into the provinces; a crime which Senate and people seemed to approve, and of which they made themselves equally guilty." Cicero's colors were somewhat overdrawn, however; and "there were always a considerable number of citizens, zealous for the public good, who rose up against these violences, and declared loudly for justice."[12]

And Mommsen, speaking of the universal debasement of the criminal procedure in slave states, says of the Roman: "But even the criminal procedure against free men, which had been from the outset and always in great part continued to be a political process, had amidst the disorder of the last generations become transformed from a grave legal proceeding into a faction-fight to be fought out by means

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12. Rollins, "Ancient History," Vol. 4, p. 443.

of favor, money, and violence."[13]

The extent to which Roman advocates had conduced to this state of perversion of justice is indicated by that historian: "In proportion as the parasitic plant of Roman forensic eloquence flourished all positive ideas of right became broken up; and the distinction, so difficult of apprehension by the public, between opinion and evidence was in reality expelled from the Roman criminal practice. 'A plain simple defendant,' says a Roman advocate of much experience at this period, 'may be accused of any crime at pleasure which he has or not committed, and will certainly be condemned.' Numerous pleadings in criminal causes have been preserved to us from this epoch; there is hardly one of them which makes even a serious attempt to fix the crime in question and to put into proper shape the proof or counter-proof." And after adverting to Caesar having permitted "the curb imposed on the eloquence of advocates to remain," he adds that much was gained under his reign "when better selected and superintended magistrates and jurymen were nominated and the palpable corruption and intimidation of the courts came to an end."[14]

The decline of the Roman state during nearly a century, from Caesar's death to the Crucifixion, was the descent towards the startling orgies which soon thereafter characterized Nero's reign. Where, indeed, was ground for hope of substantial criminal justice under the regime of either Rome or Judea in that era of debasement of rulers?

As Augustus succeeded Julius, so Tiberius Caesar succeeded Augustus. And Tiberius it was who com-

13. "History of Rome," Vol. 5, p. 349.
14. Id., pp. 349, 350.

missioned as his deputy of equal power over Judea this Pilate, who was now to stand for that Roman age in the enactment of the civilized world's utmost tragedy. The vast power for good or evil vested in Tiberius was emphasized on the side of evil by his own morbid, suspicious and cruel nature. Those frowning eccentricities of character no doubt had much to do with the failure of his Judean representative to follow his own convictions, in dealing with Jesus. And those scheming and conscienceless Jews who forced conclusions upon Pilate knew, from previous repute and experience, who it was that reigned at Rome under the pretence of a new republicanism, but with the hand of dictatorship shadowed forth in evil genius. And they felt sure that the servile agent could be conjured into fear for his official tenure by suddenly confronting him with reproach for favoring treason in Jesus, for which he might have to account to that chief to whom alone he was responsible.

CHAPTER XXIV

Roman Criminal Procedure in Christ's Time—Retrospective view of, Under Kings and Early Republic—Consuls, Quaestors, Praetors—Lex Valeria, the Great Charter of Romans—How Roman Judges Became Prosecutors—Indictment, Publication of—Defense—Vote of People as Decision—"Popular Jurisdiction" of the Comitia—Inherent Weakness of System, "Farcical Proceedings."

BEFORE discussing the legal character of the proceedings had before Pilate, some account of the precise nature of a criminal trial in Roman tribunals of that period will be in order, to the end of determining what the procurator should have done in a proper trial of Jesus under Roman procedure. And in order to rightly comprehend the scope and significance of the powers involved in that process, some knowledge of the more ancient judicial system of the kingdom and early years of the republic is necessary.

That the means displayed by Pilate in the trial of Jesus should have been the criminal procedure of a capital case tried at Rome, during the reign of Tiberius Caesar, says Chandler, is evident from the authorities. While governors might disregard these models, "ordinarily, custom compelled them to follow the criminal precedents of the Capital of the empire."[1]

Rosadi likewise observes: "It is also certain that

1. "Tr. of Jes.," Vol. 2, pp. 31, 32.

in the provinces the same order was observed in criminal cases as was observed in cases tried at Rome."[2] Greenidge is cited to the same effect.[3] And Geib: "It is nevertheless true that the knowledge which we have, imperfect though it be, leaves no doubt that the courts of the Italian municipalities and provinces had, in all essential elements, the permanent tribunals (questiones perpetue) as models; so that, in fact, a description of the proceedings in the permanent tribunals is, at the same time, to be regarded as a description of the proceedings in the provincial courts."[4]

And while this period of Roman jurisprudence was in the closing years of the republic, and certain changes in organization of tribunals and forms of procedure were effected by Augustus' legislation, it is stated on the authority of Rosadi that no radical changes were made as to criminal courts, and that "the rules and regulations that governed procedure in them during the republic remained substantially unchanged under the empire."[5] It was not until the third century, A. D., says that writer, that the permanent tribunals for trial of capital cases ceased to exist.

There were, says Chandler,[6] two periods of criminal procedure under Roman laws, before the organization of the permanent tribunals about the beginning of the last century of the republic; period of the kings, and period of the early republic. Early in

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2. "Tr. of Jes.," p. 293. Pothier's Pandects, XLVIII. 2, n. 28.

3. "The Legal Procedure of Cicero's Time," p. 413.

4. "Geschichte des romischen criminal processes." See, Chand. Vol. 2, p. 32.

5. "Tr. of Jes.," Vol. 2, p. 33.

6. *Id., pp.* 34, 35.

the regal period there existed a sacred and military monarchy, with the king at the head of both, "and supreme judge in civil and criminal matters" over lives and property; these embracing the imperium. The king might sit alone and judge cases and impose sentence, the trial being a personal investigation aided by chosen judges from the Senate or pontifical college.

Under the republic, magistrates and officers exercised the powers of government formerly exercised by the king. Consuls were supreme criminal judges; some writers[7] say with, others (Colquhoon[8] among them) without unlimited power of life and death. Two quaestors, nominees of the consuls,[9] were associated with them, holding like powers, whose functions were limited to criminal and financial matters. Tribunes, who represented the plebeians and defended

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7. Id., p. 36.

8. "Summary of the Roman Civil Law," Vol. 1, Sec. 11; where Colquhoon says that they were chosen "with great but not unlimited powers." Again (Sec. 33): "They possessed at once an administrative and executive power, of which latter the Lictors were the type; to this end they carried a bundle of rods with an axe in the middle, typifying corporeal and capital punishment. We find them also Praetors in their judicial capacity." He recognizes, however, (Vol. 3, Sec. 1986) that the power of the *imperium* "was inherent first in the consuls," until conferred on other officials at a later period.

9. Chand., "Tr. of Jes.," Vol. 2, p. 36. Colquhoon, however, observes: "Whether they were originally elected by the Curiae, or the Centuriae is a matter of uncertainty, though after the Publilian law (of the Consul Q. Publilius Philo, B. C. 340) it is clear their election rested with the Comitia Tributa." (Summ. of the Roman Civil Law, Vol. 1, Sec. 37).

them against patrician oppression,[10] by negative control over regular magistrates through the *veto*, later became chief public prosecutors of political prisoners. The praetors' jurisdiction was chiefly civil; but they at one time may have had competency in criminal proceedings.[11] In the later republic they presided over the permanent criminal tribunals known as *questiones perpetue*.[12] Aediles had criminal jurisdiction, but their special duties related to games, markets, and archives.[13]

But the dangerous power of judgment by single sovereign judge in king or consul became modified in future times in favor of trial in criminal cases before the people. Rosadi affirms that that arbitrary power "yielded to institutions which first modified it in part, and afterwards suppressed it entirely."[14] Colquhoon states that the two consuls who succeeded the kingship, "at first agreed to govern alternately by months; an inclination was soon, however, shown to exceed the legitimate authority, which caused the enactment of the *Lex Valeria*, 249 A. U. C., giving

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10. Colquhoon says the office of the Tribuni Plebis was "to support appeals of the people against the patricians, and cause the redress of grievances to be enforced." (Summ. of Roman Civ. Law, Vol. 1, Sec. 12).

11. Chand., "Tr. of Jes.," Vol. 2, p. 36. Colquhoon says they had the capacity of "a supplementary consul," that they also "sat in judgment in criminal matters *in tribunali*, or *superiore loco*, presiding over a sort of jury, *judices*." He was "the highest judge wherever he might be." They were "ultimately acknowledged, B. C. 389, as the exclusive dispensers of the higher branch of law." (Id., Sec. 1983).

12. Colquhoon, "Summary of the Roman Civ. Law," Vol. 3, Sec. 2388, 2389.

13. Id., Sec. 2384. Chand., "Tr. of Jes.," Vol. 2, p. 36. Mommsen, "Hist. of Rome," Vol. 2, p. 66.

14. "Tr. of Jes.," p. 289.

a power of appeal from the magistrate to the people."[15] According to Rosadi, this law was proposed in the Year of Rome 245 (B. C. 509).[16] It prohibited execution of capital, or severe corporal, sentence against Roman citizens who had appealed therefrom to the judgment of the people.[17]

This Lex Valeria (de provocatione) was the Great Charter of Roman civil and political liberty; and under it the so-called "popular jurisdiction of the *comitia*" was established. Its popularity naturally lead to its frequent use. This popular right became in time so potent in its effect upon the administration of justice, that the patrician element endeavored to restrain it. Says Rosadi, concerning one of the measures enacted to that end: "One of these is noteworthy. Instead of punishing its own violation, it declares such an act to be *improbe factum* (an evil deed). It appears that for those times such a declaration was sufficiently efficacious."[18] That is, that the judge who, under that law, executed sentence notwithstanding an appeal to the people had been taken by the defendant, was declared, by the law itself, to have committed a wrong—but went no farther. This act, evidently intended to reinforce the *Lex Valeria,* seems to have resulted for a time in safeguarding the right of appeal, or (where the magistrate executed sentence regardless of these laws) in bringing odium upon the judges for their denial of the right. But this process gradually under-

15. "Summary of the Rom. Civ. Law," Vol. 1, Sec. 11.

16. "Tr. of Jes.," p. 289.

17. Colquhoon, "Summ. of the Rom. Civ. Law," Vol. 3, Sec. 2381, 2383. Rosadi, "Tr. of Jes.," p. 289. Chand., "Tr. of Jes.," Vol. 2, p. 37.

18. "Tr. of Jes.," p. 289. Colquhoon, "Summ. of the Rom. Civ. Law," Vol. 2, Sec. 1221 (n).

mined the sanctions of the criminal law. Mommsen observes of this particular law, that its violation imposed upon the magistrate only the penalty of infamy,—at that time "nothing but a moral stain" which disqualified from giving testimony, and constituted no crime. If Mommsen's conception of this law, expressed at another point in his historical account, is correct, this appeal was one based upon the element of mercy, rather than for a review of a sentence of conviction under a plea of not guilty. He adds: "for the king could only judge, not pardon—unless the condemned burgess appealed to the mercy of the community and the judge allowed him the opportunity of pleading for pardon. This was the beginning of the *provocatio*, which for that reason was especially permitted, not to the transgressor who had refused to plead guilty and had been convicted, but to him who confessed his crime and urged reasons in palliation of it." The king could not grant pardon —that power "was vested in the community alone"; but he "might grant or refuse to the condemned permission to appeal for mercy (provocatio)."[19]

We believe the foregoing explanation of the enactments involving the Lex Valeria will make clearer the reasons why, under that system, *judges* finally became *prosecutors* under the criminal law. Rosadi's statement further elucidates: "But those that held power were unable longer to tolerate this condition of affairs, under which they constantly saw their verdicts impugned and their authority invalidated. This led to their being forced to abandon the post of judges and assume that of prosecutors, taking upon themselves to establish those courts which had to be appointed in the first and the last stage by the people assembled in the *comitia*. This is how an

19. "Hist. of Rome," Vol. 1, pp. 320, 95, 192.

ordinary popular jurisdiction came to be instituted in which the magistrate was the prosecutor and the people the judges."[20] Chandler observes: "The result was that for more than three hundred years the final determination of the question of life or death was in the hands of the people themselves. From the passage of the Valerian law the function of the magistrates was limited to the duty of convincing the people of the guilt of an alleged criminal against whom they themselves had already pronounced a preliminary sentence. The magistrates were, therefore, not so much judges as prosecutors; the people were the final judges in the case."[21]

Now, this prosecuting magistrate, who had pronounced a preliminary sentence against the accused who had appealed to the people in public assembly, was the official who mounted the rostra and called the people together "by the voice of a herald," and who on the return day, similarly summoned the accused, and produced evidence against the prisoner. "The indictment (says Chandler) had to be in writing, and was published on three market days in the Forum. The prosecution came to an end on the third day, and the accused began his defense by mounting the rostra with his patron and presenting evidence in his own behalf. The prosecutor then announced that on a certain day he would ask the people to render judgment by their votes. In the early years of the republic, the people voted by shouting their approval or disapproval of the charges made; but later a tablet bearing one of the two letters V (uti rogas) or A. (absolvo) was used as a ballot."[22]

20. "Tr. of Jes.," pp. 289, 290.

21. "Tr. of Jes.," Vol. 2, p. 37.

22. Id., pp. 37, 38. Colquhoon, "Summ. of the Rom. Civ. Law," Vol. 3, Sec. 2451; who says: "If the indictment ought

Under this "popular jurisdiction," while the process limited the conduct of magistrates, it also rendered the power of the people despotic and dangerous, since it gave play to passion and prejudice —an ancient characteristic of democratic assemblies charged with responsibility. And says Chandler: "The trouble at Rome was that the people were both legislators and judges in their popular assemblies; and it nearly always happened that the lawmakers rose above and trampled upon the very laws which they themselves had made."[23]

The inherent weakness of that system is shown by reports of great criminal trials, wherein "personal and political considerations foreign to the merits of the case were allowed to take the place of competent evidence"; and issues of right and of expediency were too frequently mingled. The accused trusted not so much in the righteousness of his cause as in the feelings of compassion and prejudice that moved the people as popular judges. A defendant would sometimes appear in mourning, exhibiting scars of battle, and offering prayer to immortal gods, weeping bitterly, etc.; again, his children would appear weeping, etc. "It thus happened that many of the great criminal causes of Rome were mere farcical proceedings."[24]

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to be brought before the comitia centuriata, the penal quæstor, who prosecuted *ex officio,* sent a trumpeter to the Capitol, outside the walls, and round the defendant's house, to proclaim the day on which the trial would take place."

23. "Tr. of Jes.," p. 39.

24. Id., pp. 39, 40 .

CHAPTER XXV

"Permanent Tribunals" of Romans, Reformed Comitia—Stages of Procedure under Roman Law: (1) Postulatio, (2) Divinatio, (3) Nominis Delatio, (4) Inscriptio, (5) Nominis Receptio, (6) Citatio, (7) Impaneling the Judges (or Judices, Jurors), Challenges, (8) The Trial, (9) Voting by Ballot, Three Forms—Sentence and Execution, Interval Between—Roman Crucifixion, Vile Punishment, of Non-Citizens—Preceded by Scourging—The Cross—Number of Jurors Varied—Speeches and Arguments Preceded Evidence—Verdict, Opinion of Majority—Most of These Forms used in Roman Provinces.

THEN came the permanent tribunals—as a consequence of these miscarriages of justice. Their establishment was accelerated also by reason of the inconvenience of assembling the comitia centuriata, and by the growth of criminal business. This end was worked out through a series of enactments in the Lex Calpurnia (149 B. C.) and others—the *questiones perpetua.*[1]

Under this law, the proceedings in a criminal prosecution were as follows: The first stage (postulatio) was begun by application to the praetor, or to his assistant, the index questiones, for permission

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1. Colquhoon, "Summ. of the Rom. Civ. Law," Vol. 3, Sec. 2388. Chand., "Tr. of Jes.," Vol. 2, pp. 43, 44.

to prosecute a criminal charge.[2] No public prosecutors, or states' attorneys were then known.

The second stage (divinatio), determined who of two or more was best fitted to prosecute; this only when more than one charge was made. This divinatio, says Chandler, "was more than a mere hearing; it was a regular trial in which the fitness of the different candidates for the position of *delator* was argued before the president and the jury. This jury was in many cases distinct from the one that finally tried the case on the merits. The purpose of the whole proceeding known as the divinatio was to secure a prosecutor who was at once both able and sincere; and both these qualities were generally very strenuously urged by all those who desired to assume the role of accusor. * * The details of the evidence affecting the merits of the charge were not considered at this preliminary trial."[3]

The third stage of the proceeding (Nominis delatio) occurred after the request to prosecute; and consisted of a private hearing, after an interval of time,—before the president of the court, to secure further information concerning the charge—the *criminis delatio;* whose object was to note a specification of the personality of the accused, as well as of the charges against him. The presence of the accused was necessary, unless a valid excuse was given. If he appeared, the prosecutor questioned him at length concerning the facts of the crime; this *interrogatio* being to satisfy the magistrate that there was a prima facie case "to carry before the regular tri-

2. Colqu., Vol. 3, Sec. 2453. Chand., Vol. 2, p. 43.

3. Chand., "Tr. of Jes.," Vol. 2, p. 44. Colqu., Vol. 3, Sec. 2453. Colquhoon there says that "when many persons presented themselves simultaneously to prosecute, lots were cast for the precedence—namely, before the *delatio nominis.*

bunal in open trial."[4] This step was in the nature of a grand jury.

The fourth stage (inscriptio) involved the indictment, framed by the president, and signed by the prosecutor, and by witnesses against the accused; called *subscriptores*.[5] This charge specified the only offense triable, and was drawn up by the president.

The fifth stage (nominis receptio), was the normal reception by the president, of the indictment.[6] The case was then said to be *in judicio*, the accused *in reatu*. A day certain was then fixed by the president for appearance of the accused, and for the trial—usually ten days from nominis receptio; during which interim the defendant was required to prepare for trial. He was allowed to be at large during the interim. "Imprisonment to prevent escape had almost ceased" at the time in question, according to Chandler.[7] If the defense was weak, he would ap-

4. Chand., "Tr. of Jes.," Vol. 2, p. 45. Colqu., Vol. 3, Sec. 2453.

5. Chand., "Tr. of Jes.," Vol. 2, p. 46. Colqu., Sec. 2453; where Colquhoon thus states the rule of criminal procedure: "if the defendant denied the impeachment, the demand was made that he should be set down in the libell, describing the name, offense, time, and persons, which must be subscribed by the accuser."

6. Chand., "Tr. of Jes.," Vol. 2, pp. 46, 47. Colqu., Sec. 2453. Under the Lex Julia, says Colquhoon, "a certain form was enacted, termed a signed libell, or *inscriptio*, which had to be deposed to, the proceeding having been duly executed, and thereupon inserted in the register of the court with the name of the prosecutor and defendant, which was termed *nomen recipere*."

7. "Tr. of Jes.," Vol. 2, p. 47. Colquhoon, however, declares: "In cases of serious and manifest crime, the local authorities were empowered to keep in arrest a defendant accused before them, but were under the obligation of forwarding him forthwith to the imperial lieutenant with their re-

pear, if strong, he would probably go into exile—this was the theory of the state; and exile was encouraged, Romans being averse to putting a citizen to death.

The sixth stage (citatio): On the day of trial all necessary parties, including judges or jurors, were summoned by herald, to appear. If the accused failed to appear, trial could proceed in his absence. Chandler thinks it not clear why he must appear at the nominis delatio but need not at the trial. But his appearance at the former stage was for purposes of identification. Colquhoon says, as to appearances on day of trial: "If the prosecutor were absent, the name of the defendant was erased from the register of the court; but if the defendant were not forthcoming, he was condemned in default * * and his property confiscated"; that under the milder practice of the emperors, defendant's presence was required, he was cited by edict, and on expiration of a year, his property confiscated, "but he was not sentenced."[8] Chandler declares that the defendant's presence was unnecessary, whether he was in voluntary exile, "or was obstinately absent."[9] Excusable absence, however, necessitated adjournment.

The *Lex Remmia* provided that "if any prosecutor knowingly accused another citizen falsely of a

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port; this custody was enforced in three ways,—by delivery of the prisoner to bail,—by military custody,—and by imprisonment. The second of these might be either mitigated or very strict: occasionally slaves were substituted for soldiers. The prisoner was not laid in chains in prison, except on indictments for very serious offenses, and even then the dictates of humanity were to be observed." (Summ. of Rom. Civ. Law," Vol. 3, Sec. 2465).

8. "Summ. of Rom. Civ. Law," Vol. 3, Sec. 2454.

9. "Tr. of Jes.," Vol. 2, p. 48.

crime, the accuser should be prosecuted for calumny (calumnia); in case of his conviction he was branded on the forehead. The effect of this law was to check corruption in office, but "accusers" in public prosecutions came finally to be identified, in the public mind, "with coarse and vulgar informers whose only motive in making public accusations was to create private gain."[10]

The seventh stage of the Roman prosecution, was the empanneling of the judices. Here the trial formally began. The praetor placed in an urn the names of the panel of jurors, inscribed on white tablets, then drew out a certain number. Both prosecutor and defendant could challenge a limited number, as the names were being drawn—this number varying at different periods.[11]

Jurors in criminal cases under Roman law were designated *judices*. A Judex was a member of a judicial body sitting in the trial of facts. His functions, says Colquhoon,[12] closely resembled those of the English special jurymen. They were summoned in criminal cases, from existing jury lists termed *album judicum*. Challenges could reduce the number by one-half; those retained were termed *selecti*. The Praetor sitting as Quaestor acted as the Judge. The number summoned as judices is variously reported in the authorities at 56, 70, and 100, which might have depended on an express law, which in very important cases was passed to regulate the proceedings. Ordinarily a fixed number, somewhat lower, were

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10. Id., p. 49.

11. Rosadi, "Tr. of Jes.," p. 290. Colqu. "Summ. of Rom. Civ. Law," Vol. 1, Sec. 45, Vol. 3, Sec. 2454. Chand. "Tr. of Jes.," Vol. 2, p. 49.

12. "Summ. of Rom. Civ. Law," Vol. 1, Sec. 45.

called. As the *Lex Julia* treated judices for criminal cases as being in distinct categories from those of civil suits, each had its separate *album* or panel. It is very probable, as Rosadi among other authorities, asserts, that an analogy exists between the Roman and English procedure, and that the jury is of Roman, not of English, origin.

With the eighth stage the trial began, in the Forum. "On the ground in front of the raised platform upon which the praetor and judges sat, were arranged the benches of the parties, their advocates and witnesses." The trial must be had during the day, "between daybreak and one hour before sunset,"—as was required by the Hebrew law. The prosecutor and state witnesses, the defendant "supported by his patrons and advocates," being present.[13]

The Roman system of criminal procedure reversed the modern rule, and the regular speeches containing argument, characterization and illustration, and statement of fact proposed to be proved, were made at the beginning of the trial.[14] Evidence followed, to substantiate the speeches and statements. The prosecutor's speech was the *peroratio*. The defense was in like form and under similar rules. After this came "a short *altercatio*," by question and answer, to bring out salient points on both sides, says Colquhoon.[15]

In the ninth stage of the trial: The judges (Roman jurors) voted by ballot, a majority deciding the verdict; the tablets marked A. (absolvo), C. (condemno) and N. L. (non liquet); which be-

13. Chand., "Tr. of Jes.," Vol. 2, p. 50. Rosadi, "Tr. of Jes.," p. 293. Colqu., Vol. 3, Sec. 2454.

14. Chand., "Tr. of Jes.," Vol. 2, p. 51.

15. "Summ. of Rom. Civ. Law," Vol. 3, Sec. 2454.

ing cast, were counted by the president. The *non liquet* was an expression of doubt, requiring a retrial at a future day.[16] Judgment followed the verdict.

Where no appeal was taken, sentence was executed "without delay, by order of the Senate, except in criminal cases, in which ten days must lapse."[17] In the provinces, the order for execution of a capital sentence was received by a centurian, from the *praeses militum* (sheriff); but at a later period of the empire a lictor executed sentence of decapitation.[18]

Edersheim observes, that this rule of an interval of ten days between sentence and execution "does not seem to have applied to the provinces, if indeed in this case the formal rules of Roman procedure were observed."[19]

Crucifixion, as an execution of capital sentence, was practiced by Romans on a colossal scale. Degradation was part of this infliction, since it was peculiarly a *supplicium servile,* says Chandler.[20] Only the most degraded criminals met death in this manner; and Roman citizens were exempt from this

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16. Id., Sec. 2458. Rosadi, "Tr. of Jes.," p. 292. Chand. "Tr. of Jes.," Vol. 2, p. 51.

17. Colqu., Vol. 3, Sec. 2469.

18. Id., Sec. 2470.

19. "Life and Times of Jesus the Messiah," p. 582; Colqu. "Summ. of Rom. Civ. Law," Vol. 3, Sec. 2459; where that writer declares that the same forms of criminal procedure were used in the Provinces, "with the only difference, that the praetor, and not the *judices,* delivered judgment; nevertheless, in such a way as to be always according to the opinion of the majority; and the same practice was observed under the emperors, by the *prefecti urbi* and lieutenants."

20. "Tr. of Jes.," vol. 2, pp. 55-57. Rosadi, "Tr. of Jes.," pp. 301-305.

punishment. Scourging became a preliminary to crucifixion; this usually after being bound to a column; the terrible flagellum itself sometimes producing death. Then the condemned was led outside the city, to some conspicuous place, for crucifixion; being obliged to bear his own cross. A carnifex, or hangman, assisted by a band of soldiers, executed the convict, under Roman law. The victim was watched until dead, to prevent friends or relatives from taking him away. The custom was to allow the body to rot on the cross, or be devoured by beasts or birds of prey. Sepulture was generally forbidden by law; but there were exceptions.

Rosadi adds some features of the Roman criminal prosecution, and differs somewhat from the foregoing, as to some details: The prosecutor declared from the rostra that he would on a certain day accuse a certain citizen for a specified offense, and called upon him to listen. On the trial there seem to have been three pleas by the prosecutor, called orations,—one per diem. On the third day the prosecutor yielded the right of speech to the defense. After defendant's case was submitted, the prosecutor announced the day when he would "repeal the plea," already published, and he on that day called upon the people to consider it and give their votes. In instituting prosecution, in the permanent tribunals, defendant was summoned to appear according to the rules in civil trials; both parties appearing before the magistrate, who swore the plaintiff and denounced (proclaimed) the accused's name. The names of the parties, day of appearance, the charge, and the law transgressed, were entered in the *libellus inscriptionis*. The charge was examined preliminarily, and quashed by the magistrate if irregular. The prosecutor was required to give security, and to declare anew the truth of his charge and that it was not calumnious. In criminal

trials under the new law, some of these forms were disused, but the principal ones remained. He declares also, that it is certain that in Roman provinces the same order was observed as at Rome.[21]

21. "Tr. of Jes.," Vol. 2, pp. 292, 293.

CHAPTER XXVI

The Course Pilate Should have Followed—No Roman Trial on Holiday—Roman Witnesses, Competency of—Two Unexceptionable Witnesses Required to Establish Charge—Right of Appeal by Citizens, Not Applicable to Jesus.

FROM the foregoing exposition of Roman criminal procedure and the functions of the procurator, we may probably safely assume that Pilate, or any other Roman official having the power of a praetor, under the practice of the "permanent tribunals," whether sitting in a province or at Rome, upon the trial of a Roman citizen, in the time of Christ, was empowered to and should have proceeded substantially as follows:

First: One or more prosecutors (delators) must have appeared; the Procurator should, with or without aid of special jurymen, have considered the applications to prosecute, and, supposing that two distinct charges were brought forward, he

Second: would (divinatio) determine who was best fitted to become delator.

Third: The identity of defendant, and the specific charge or charges against him must be determined by the Procurator (*nominis*, or *criminis delatio*).

Fourth: The indictment (inscriptio) would be drafted by authority of the Procurator, and signed by the prosecutor and prosecuting witnesses (subscriptores).

Fifth. (nominius receptio). If the Procurator found the indictment (libellus) irregular in substance, he would quash it. If sustained, then upon its

formal reception the case was *in judicio,* and the defendant was in jeopardy (in reatu); record was made of parties, day of appearance, the charge, and the law transgressed. The Prosecutor—who must have been previously sworn not to knowingly accuse defendant falsely, etc., must now renew his oath, and give security. A day of trial, at least ten days hence, would be fixed upon; defendant to remain at large on bail.

Sixth: On the day of trial the court's herald (praeco) would summon (citatio) all parties and the Jurors (Judices) to appear. And if the prosecutor failed to appear, the case would doubtless end by dismissal, through erasure of defendant's name from the court record. If he did appear, but defendant did not, the latter would be "cited edictally," but, while if he still defaulted his property would be confiscated, yet his trial would proceed in his absence, unless a continuance were had because of his excusable absence.

Seventh: Impaneling the jurors (judices) for the trial—drawing their names from the urn in which the tablets had been placed; the challenging of jurors (exact number of challenges now unknown, but fixed, and down to one-half).

Eighth: The trial proper, would take place, on a legal day—not a holiday or feast-day,—in the daytime, on the raised ground in front of the (in case of the Procurator of Judea in Jerusalem) Pretorium of Pilate. The prosecutor and prosecuting witnesses appearing, and the defendant, supported by his patrons and advocates. The prosecutor's opening speech (peroratio) would be made, embracing the facts to be proved, and his argument, etc.; evidence would then be introduced to sustain the speech and charge. Witnesses must have been sworn, the form of oath being that which was most binding upon

conscience, whether heathen or Jew.[1] Persons of special influence, or of near kinship, intimate friends, and "mortal enemies"[2] of defendant, would be rejected as incompetent, as would be a particeps criminis to the charge. Witness must state only what is within his personal knowledge; his statement must have been clear and certain—he must not have contradicted himself. To establish the charge, two unexceptionable witnesses were required.[3] No witness could have been required to testify to self-incriminating facts.

Defendant's case would open with statement and argument, similar in character to that of the prosecutor's advocate,—concerning the defense to the charge, made by his advocate or patron. It seems fair to presume that in the instance of defendant's inability to employ an advocate, the Praetor, or Procurator would, in analogy to the practice under the Roman law in civil cases, appoint one to defend him. Says Colquhoon: "The Praetor by his edict assigned an advocate where the client was not provided with professional assistance."[4]

Then would follow the introduction of evidence for the defense; after which the altercatio—questions and answers between representatives of the parties, calculated to sift out the main phases of the real question in controversy.

The jurors (judices) would then determine, by

1. Colquhoon, "Summ. of Rom. Civ. Law," Vol. 3, Sec. 2328, 2335. Best's "Principles of Evidence," Sec. 115, 131.
2. Colqu., Vol. 3, Sec. 2329.
3. Id., Sec. 2330.
4. "Summ. of Rom. Civ. Law," Vol. 3, Sec. 2009. "The period of this provision of the edict is not known; it was, however, clearly of comparatively recent introduction; previous, however, to the age of Ulpian, circa A. D. 195." Id. *He cites Pothier*, 3, 1, 1, Sec. 4.

majority vote by ballot, the question of guilt or innocence of defendant. Judgment by the Procurator, upon the verdict, would end the trial. The unanimous verdict, as a necessary condition to its legality, was unknown to the ancient law, Roman or Jewish.

If there was any rule of criminal procedure under the Roman law at the time in question, which deprived a defendant who was not a Roman citizen of any right of defense which the former could interpose, we are not aware of the fact;[5] although, as we have seen from some authorities herein cited, the Roman Praetor in Rome, and the Governor or Procurator in the provinces possessed that imperial power which gave him the arbitrary right, if he saw fit to exercise it, of denying to an accused person who was a foreigner in Rome, or a non-citizen resident of the province, the benefit of a regular Roman tribunal, and the further right of exercising in his own

5. Colquhoon says: "The remedies which were available by the convict, consisted in an appeal to the people, in so far as this was admissible, and to the tribunes, which latter could be appealed to immediately against the prosecution or motion for punishment, and thereupon the tribunes, having taken the matter into consideration in their conclave, the votes were collected, and a formal decree drawn up, according to the opinion of the majority." He adds, that appeals to the sovereign "owe their introduction to the imperial form of government; but ultimately, appeals to a higher tribunal were regularly admitted on the same conditions and in the same forms as in civil process. Even a third party might appeal in favor of the convict, who could not repudiate this benefit. Notwithstanding, however, the favor thus shown to persons under sentence, there were certain high crimes and misdemeanors where, by reason of confession or undoubted proof, no appeal and no delay in the execution of the sentence was allowed." ("Summ. of Rom. Civ. Law," Vol. 3, Sec. 2485).

person, all the functions of a criminal tribunal. But even in that case he would not be legally justified in waiving the requirement of proof of guilt by two competent witnesses, addressed to some specific charge known to either the Hebrew or the Roman law.

The Roman citizen had the right of appeal from the judgment of condemnation, to the Emperor; this in theory at least. This right was probably denied to a non-citizen.[6] Jesus, therefore, being a resident of Galilee and not a Roman citizen, had not the right of appeal from an adverse judgment by Pilate, if one had been rendered by him.

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6. Chand., "Tr. of Jes.," Vol. 2, p. 145; who says: "Nor was there a right of appeal in such a case, from the judgment of the procurator to the emperor at Rome. The decision of the governor against a provincial was final." No authority is cited to this point. He refers to the case of Paul before Felix and before Festus, as instances of Roman citizenship being involved. (Acts XXIV, XXV, 11. XXVI, 32.) See note 5, as to Colquhoon's exposition of the Roman law concerning appeals.

CHAPTER XXVII

The Roman Trial—Pilate's Court Outside of Palace —Sanhedrists the Accusers—No Specific Charge Made—Jewish Disclaimer of Right to Execute Death Sentence—Jesus, the Sinless, in Dire Jeopardy—Later Accusation Suggested Sedition —Blasphemy Charge Abandoned—Pilate's "What Accusation Bring Ye?" What it Meant as to Trial Before Him.

TO recur to the subject of the proceedings before Pilate:

The time of arrival of Jesus led by Caiaphas "and the entire Sanhedrin," at the Roman governor's tribunal, is fixed by Chandler at between six and seven o'clock in the morning.[1] Roman governors, says Suetonius, mounted the bema at sunrise to accommodate the people, that they might enjoy repose at midday in the Oriental climate.

Jesus was taken into Pilate's presence inside the Pretorium, but the Jews halted outside, "that they might not be defiled, but might eat the passover."[2] Hovey observes of St. John's words, that they "imply that these conspirators against the life of Jesus supposed that, by entering the court of Pilate, they would be so defiled as to be unable to cleanse themselves, ritually, in time to eat the passover,"[3] which was now begun.

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1. "Tr. of Jes.," Vol. 2, p. 96. Dr. Hovey, in his Commentary on St. John (pp. 362, 363), says: "The word translated *early* is used in a technical sense to denote the fourth watch, from 3-6 A. M."

2. John 18; 28.

3. Commentary on St. John, p. 363.

Whether it was "in a spirit of gracious and politic condescension," as Chandler[4] asserts, that Pilate came outside to meet the party, or because he thereby deferred to the fact that it was only outside the palace in the open air that Roman trials were carried on, may be debatable. But it was essential to the due course of Roman procedure that judgment-seats should be in the open air, and upon elevated areas "where everybody could see and understand what was being said and done." It was doubtless somewhere midway between the two great marble wings of the palace, and just outside the main entrance, that Pilate's seat of justice was located. Usually there was space for all who were connected with the trial to assemble on the raised dais; but the traditional representations of this immortal scene seem to bear out the idea that, in this instance, Jesus and His accusers stood, during the proceedings. Keim, Geikie and others, bear out the assumption of Chandler that, while latin was the official tongue of the Roman empire, yet that the Greek language was here used,—with which Jesus is supposed to have become acquainted in Galilee.[5] It is also asserted that probably no interpreter was present.

"It is also reasonably certain" says Chandler, "that no special orator like Tertullius, who informed the governor against St. Paul, was present to accuse Jesus";[6] and he believes Caiaphas performed that function. Doubtless he or some other prominent Sanhedrist—one or more—acted as His accusers.

Now was the Lowliest One in the danger of him who stood for the mightiest in power of Rome. The Serenest of the Guileless was in the toils of most

4. "Tr. of Jes.," Vol. 2, p. 99.
5. Id., p. 101.
6. Id.

agitated and corrupt accusers. A sinless ministry, whose fondest habitat was heaven's footstool in the desert, was now put in the scale against worldly judgment whose spirit was ambition for the gross of earth. The "mightiest in the mightiest"[7] of the Merciful, whose achievements in parable and in miracle had enthroned Him with the Most High, would here fall victim because of mockery of mercy. The noblest Lawyer God ever made, Who had in childhood and in manhood astounded to silence sages and persecutors, and who now would baffle the brain of Rome's regent, must suffer defeat for that His dominions were to his delators and judge the undiscovered country of the Celestial. The judgment about to be entered—farce though it would be—was to be one for the ages. The responsibility before futurity would rest between Rome and Jerusalem. Yet the Holy City—though physically held in later ages by the infidel—was to become the City of the Messiah in a sense far more vital to man's spiritual welfare than is that center which, for false pride of power, is dubbed "The Eternal!" And the Nazarene, Whose very fate was, indeed, to be the mockery of ages to His accusers and judge, would rise triumphant, His flag flung over an ever widening Christendom from the towers of both cities, as the symbol of that Love that conquers the kingdoms of the heart, without limit of clime, time or circumstance.

Saints Matthew and Mark unite in recounting that the proceedings before Pilate were begun by his inquiring of Jesus: "Art Thou the king of the Jews?"[8] While St. Luke's account opens with the accusations: "We found this fellow perverting the nation, and forbidding to give tribute to Ceasar, and saying

7. Shakespeare, "Merchant of Venice," Act IV, scene I.
8. Matt. 27; 11. Mark 15; 2.

that He Himself is Christ a King,"[9]—followed by Pilate's said inquiry. St. John's relation differs materially from the foregoing, as to the opening proceedings; indicating that Pilate "went out unto them and said, What accusation bring ye against this man? They answered * * if this man were not a malefactor, we should not have delivered him up unto thee."[10]

It seems evident from all these Gospel reports, that Pilate had been apprised of the accusation of sedition or treason, and of Jesus' claim of Messiahship, before he inquired whether He was "King of the Jews"; since only in the light of some such charge could he have intelligently made the inquiry.

On the other hand, the demand "What accusation bring ye?" was the proper legal step for the Procurator to take, at the outset of a trial, were he pursuing the Roman procedure we have outlined; and the due response would have been for the accusers (delators) to have specified the charge or charges sought to be proven against Jesus. No preliminary record, such as has heretofore been recounted, had yet been made. Pilate might, by an abridgement within his power, have caused a record of the charge to be then and there made, as a basis for an immediate trial.

The seemingly inevitable conclusion, upon the reports of Sts. Matthew, Mark and Luke, is that the Sanhedrists had accused Jesus of setting up kingship, or Messiahship, over Judea, before the governor inquired as to His kingship, and that those accusations were brought out by Pilate's demand for specific charges. And St. John's Gospel accords with this assumption, since he makes Pilate inquire later

9. Luke 23; 2.
10. John 18; 29, 30.

on as to Jesus' kingship, after he had verbally referred the case back to Jewish law, and had been met by the admission of the Sanhedrists that they could not execute judgment against Him because *death* must be the penalty.[11] The fact that Pilate had received information of some charge of that character is further evidenced by Jesus' reply to Pilate's question—"Sayest Thou this of Thyself, or did others tell it Thee concerning me?" followed by Pilate's "Am I a Jew? Thine own nation and the chief priests delivered Thee unto me. What has Thou done?"[12]

The Sanhedrists had thus, in effect, charged Jesus with being such an evildoer as required Him to be condemned and executed by a Roman tribunal—confessing that they could not carry out such a sentence. Doubtless they had not yet informed Pilate that the Mosaic law they claimed He had violated was involved in the charge that He "made Himself the Son of God,"—this, according to St. John, occurred still later, and after Pilate had twice declared to them that he "found no crime in Him," had suggested His release and had then scourged Him.[13] But that there had been an almost immediate response to his demand for a specific charge, which response suggested a seditious pretence of kingship, seems clear from a comparison of the Four Gospels. St. John is held by some of the most eminent biblical authorities[14] to have written later than the other

11. Id., 31: "Take ye him, and judge him according to your law. * * * It is not lawful for us to put any man to death." 33: "Art thou the King of the Jews?"

12. Id., 34, 35.

13. Id. 38. 19; 7.

14. See, Dr. Hovey's Introduction to his Commentary on St. John, p. 51; citing Irenaeus, Clement of Alexandria, Westcott, and others.

three Evangelists, and to have omitted portions of their circumstantial accounts, as unnecessary of repetition, while including some very material details not narrated by them; and this deduction seems almost inevitable.

But that the charge of blasphemy—that upon which the Sanhedrists had decided Jesus worthy of death—was abandoned before Pilate, and that that of sedition or treason—which in turn had failed before them for want of evidence—was at first urged, before Pilate, seems clear. And, at least down to the time when reference to "the Son of God" is made, Pilate seems to have regarded the accusation of sedition as the only one meriting serious consideration by him.

Now, in demanding a specific charge, Pilate followed the Roman procedure which both secular and biblical records show was extant in that day. His successor, Festus, at Ceasarea, while holding Paul in bonds—he having appealed to Caesar—declared to King Agrippa, his official guest, that he answered the Jews who demanded judgment against Paul: "It is not the manner of Romans to deliver any man to die, before that he which is accused have the accusers face to face, and have license to answer for himself concerning the crime laid against him" (Acts 25; 16), and : "For it seemeth to me unreasonable to send a prisoner, and not withal to signify the crimes laid against him" (Acts 25; 27).

And St. Luke's report of what occurred after Jesus was sent by Pilate before Herod, and had been returned by him to Pilate, bears out the theory that sedition was the one offense that had been charged, and considered by Pilate: "Ye brought unto me this man, as one that perverteth the people: and behold, I, having examined him before you, found no fault in this man touching these things whereof ye ac-

cuse him: * * nothing worthy of death hath been done by him."[15]

Judge Gaynor rejects the theory that a trial was had before Pilate: "There is no foundation for saying there was a trial before Pilate. There was not even a witness examined. The jurisprudence of Rome knew of no such trial as that."[16] He then refers to Festus' action concerning Paul;[17] and dismisses the idea of a trial with the observation that, as Jesus could not claim the rights of a Roman citizen, therefore He was not tried before a Roman court. That he was simply asked by the Jews to execute their own sentence, after approving it. "The judgment could not be executed without his approval of it."[18] He bases his conclusion also upon the response of the Jews to Pilate's inquiry as to the accusation against Jesus—that they would not have delivered Him up if not a malefactor; thus claiming that they had tried Him, etc. He also holds that the crime for which Jesus "was tried and convicted" by them was blasphemy; and he nowhere mentions sedition as involved in any accusation made against Him at any time. "Jesus had been claiming supernatural power, which in a human being was blasphemy."[19]

We have adverted to Judge Gaynor's attitude wherein he considers Caiaphas' inquiry as to what the witnesses said against Jesus, as being "the usual call upon the accused to put in his defense";[20] and have essayed to point out that, upon that theory, what Pilate inquired of in the same way would like-

15. Luke, 23; 14, 15.
16. "Classics of the Bar," pp. 36, 37.
17. Acts 25; 16.
18. "Classics of the Bar," supra.
19. Id., p. 30.
20. Id., pp. 32, 33.

wise foreshadow a defense of one on trial. And Pilate's pointed inquiry: "What accusation bring ye?" would seem to further the idea that he understood that he was called on to hear and determine a criminal charge. We have quoted further language of the Procurator, and more will be mentioned hereafter, indicating his pursuit of a trial and not of a mere execution of sentence. We dismiss this reference to that able jurist's position, with the suggestion that it seems inadmissible to ignore certain proceedings before Pilate as aiming at a charge of sedition—or of treason, which seems to have embraced the element of sedition.

CHAPTER XXVIII

No Evidence Adduced Before Pilate, No Accuser Put Under Oath, No Jury, Pilate Exercised Potestas—Why Was Not Evidence Required?—Pilate's Cowardice—Did Not Review Case—In Effect He Acquitted Jesus—Jesus' Silence Before Pilate Legally Justifiable—His Messiahship Not Treason or Sedition Against Rome—Roman Competency to Consider Question of Messiahship.

BUT while the record before Pilate reveals at least the charge of sedition, it shows with certainty that the whole case rested entirely upon mere accusations—unsworn assertions. No whit of testimony is disclosed by any Evangelist, nor does it appear that any accuser was put under oath.

There is not even a suggestion from the Evangelists that the Sanhedrists brought with them to Pilate's tribunal any record of condemnation of Jesus, for use as a basis of further proceedings, by way of review or otherwise. We have seen that such record was essential to a review under Hebrew procedure. Also, that Pilate could, if he saw fit, adopt the Jewish mode of trial in determining whether Jesus was guilty of capital crime under Hebrew law. If that mode were adopted, witnesses must appear, and be warned according to Hebrew practice. If a Roman trial were pursued, they must have been sworn. He could not *review* the case—ascertain whether Jesus had been convicted of any crime meriting capital punishment under either system of laws—without hear-

ing evidence. Of course no independent trial of the issue of guilt or innocence could be had, without evidence.

Why did Pilate fail to require production of witnesses under legal sanctions? If he entertained the case under Roman procedure, why dispense with the prosecutor (delator) under the Roman oath and bond? His efforts to ascertain what charge the Jews had made or were seeking to make against Jesus may have been intended to lay foundations for the Roman indictment (inscriptio); if so, there is no evidence that such an instrument was drawn up. Why did he ignore the empanelling of a jury (judices)? But if he exercised his imperial right to be himself the judicial power (potestas), yet why did not he require at least that, to a verbal charge there should be added sworn testimony tending to support it?

Only surmises can be indulged in on these heads. Possibly, that Jesus was inside the Pretorium while His accusers were outside on the "Gabbatha"[1] or judgment place in front, so that He had not "the accusers face to face,"[2] is significant. The time was that of a Hebrew festival, precluding any form of judicial proceeding. The Jews, though seeming to have impliedly charged sedition, yet also charged Him with "many things,"[3]—Pilate may have seen in this wavering, temporizing course enough to satisfy him that no formal trial was desired, and that no one intended to furnish legal evidence. As the transaction went on, excitement increased and took on an aspect little short of portendence of mob vio-

1. John, 19; 13.
2. Acts, 25; 16.
3. Mark, 15; 53. Matt., 27; 13.

lence[4] against the Accused, and the Procurator's authority was menaced through the demonstrations of the Sanhedrists and the now willing populace, their instruments.

The truth regarding the situation is seen plainly enough in the Gospel accounts: Here was a grave emergency, on the first appearance before Pilate—and a weakling to cope with it. Pilate durst not apply the Roman law, nor even exercise the *imperium*, in the usual and judicially effective manner. He dared not postpone the hearing until a legal day had arrived,—the revengeful, maddened accusers and the attendant rabble meant, to him, immediate action or an alternative he had not the moral courage—even with the legions behind him—to face. He did go far enough to bring out an imputation of sedition, and, probably, of the Messiahship; but he did not legally try any charge. Nor did he review, as one having power to reverse or to confirm and execute, a previous conviction.

Let us pursue the events before Pilate. All of the three first Evangelists unite in narrating that, to Pilate's inquiry "Art Thou the King of Jews?" Jesus answered in the affirmative.[5] "Thou sayest it" was the equivalent of acquiescence in what was suggested by the inquiry. While St. John states in effect that after some preliminaries, Jesus declared Himself a king, but "not of this world."[6]

Matthew and Mark are silent as to whether Pilate expressed himself for or against Jesus at this stage of the proceedings; but Luke and John both declare that He here announced to the chief priests

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4. Matt., 27; 20, 24. Mark, 15; 8, 11. Luke, 23; 5, 18, 23. John, 18; 40. 19; 6, 12, 15.

5. Matt., 27; 11. Mark, 15; 2. Luke, 23; 3.

6. John 18; 35, 36.

and people that he "found no fault"[7] in Him. The silence of the two first Evangelists, however, is evidence of Pilate's favorable conclusion, since they both record that Jesus was thereafter accused of "many things";[8] St. Luke also stating that they more fiercely accused Him of "stirring up the people," and of teaching "throughout all Judea, beginning from Galilee"[9]—this latter suggestion causing him to send Jesus before Herod. All of which makes it clear that Pilate, although informally, in effect acquitted Him of guilt upon the charge of a seditious claim of kingship.

Meanwhile Jesus, acting for Himself, and having no advocate to defend Him—save that Pilate himself had thus far regarded His rights in rejecting the accusations—remained silent and "answered nothing"[10] to the further accusations of "many things"; this even after the Procurator demanded why He answered not. All of the Evangelists bring out this phase of silence; although St. Luke makes it to occur before Herod;[11] while St. John's account postpones it until after Pilate had repeatedly acquitted Jesus of guilt for sedition, and had approached Him concerning the charge—now brought forward before Pilate for the first time—of "making himself the Son of God." He then declined even to answer the Procurator's question: "Whence art Thou?"[12]

His refusal to respond to the fusilade of charges and imputations of the Sanhedrists was legally justi-

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7. Luke, 23; 4, 14. John, 18; 38.
8. Matt., 27; 13. Mark, 15; 3. 4.
9. Luke, 23; 5.
10. Matt., 27; 13, 14. Mark, 15; 4, 5.
11. Luke, 23; 9.
12. John, 19; 9.

fied, because not sustained by proofs. Furthermore, Jesus had realized, while before them, that all responses to their accusations would be made in vain. His lawyerlike comprehension of essential steps in procedure was dominated by a prescience of His inevitable doom to suffer death.

But why did He answer with silence Pilate's question seeking light as to His origin? Hovey's Commentary[13] declares that "only a conjectural reply can be given"; that probable misconception by Pilate of a true answer, or that a response would raise a religious question not pertinent to the Procurate's judicial duty, or would tend to strengthen his superstition to no relevant purpose,—such thoughts might have prevailed. Or, again, because the Saviour knew that His Father's will would be accomplished by silence, since Pilate was to be the instrument of His crucifixion,—any of these reasons might explain, etc.

It is believed that His silence here resulted from His conclusion upon the premise, that His Sonship of God, or His Messiahship, did not involve sedition or treason against Roman or other law or sovereignty—that as His kingdom was "not of this world,"[14] the Roman tribunal would not attempt to exercise jurisdiction to determine its nature or effect, nor render judgment of condemnation or of acquittal, upon His claim.

As seen,[15] we have herein contended that such an attitude of negation concerning the Hebrew tribunal would be untenable—in other words, that under the Mosaic Law and the "Messianic tests" the question of Messiahship might and should have been legally entertained and passed upon by the Sanhedrin. But

13. On St. John, p. 373.
14. John, 18; 36.
15. Chapter XXI.

to the Roman Procurator, who was presumably trying to discover and judicially pass upon the legal character of Jesus' claim to Sonship of God, either under the Hebrew law or the Roman, Jesus might well decline to reveal His divine origin, on the twofold ground that no specific Hebrew law had been cited by His Jewish accusers, and also because no proof had been offered to sustain a charge based upon that claim, before either tribunal. This point seems the more pertinent in view of the fact—known to both Jesus and the Sanhedrists—that Caiaphas had virtually, if not legally, condemned Him during the previous night, for blasphemy, on His confession of such Sonship, but which charge had now been dragged in at the last moment before Pilate, when all other expedients had failed—instead of bringing it forward for confirmation as *the* charge upon which He had been condemned by them. But we believe the better and more probable reason for His silence is that indicated in the preceding paragraph. In assuming that position, we do not deny to a Roman magistrate the competency—whatever may have been the difficulties arising from unfamiliarity with Hebrew law and authority—to hear and determine the issue of Sonship of God as presented before Pilate.

CHAPTER XXIX

Why Pilate Suggested Trial Under Jewish Law—The Jus Gladii—His Conception of the Jews' Charge—Pilate's Virtual Acquittal of Accused—Jesus "From Galilee"—Pilate's Evasion of Responsibility.

TO return to the initial proceedings before Pilate for another purpose: "If he were not a malefactor, we should not have delivered him up to thee."[1]

If by this response the Jews meant to indicate that they wished Pilate to know that they had at least gone through some form of condemnation of Jesus, upon some unspecified charge, and desired him to merely approve their judgment as being conclusive, and to order execution thereon, then it seems clear that they thereby submitted the case to the Roman tribunal as one beyond their jurisdiction, as to execution of sentence—in other words, that it was for a *capital offense* that they had pretended to convict Him, and that Pilate so understood the case. This conclusion is, in our view, made morally certain by the fact of their bringing Him before Pilate with a pretense that some investigation into criminal charges against Him had been made, and that further proceedings before Pilate were necessary, or at least expected. How else could Pilate have viewed the submission of the case to him, a Roman Procurator? Moreover, this supposition is in accord with the contention—which we believe has been

1. John, 18; 30.

shown to be based upon strong ground—that the right to try the case, subject to Roman confirmation and execution, was in the Sanhedrin, while the *jus gladii*—right of capital execution—rested in Roman jurisdiction alone. And Pilate could not well have failed to recognize, in this application to him for judicial action, the fact that some capital charge was involved.

Chandler, however, believes that Pilate did not understand that a capital charge had been made, "else he would not have suggested that the Jews take jurisdiction of the matter"[2]—would not have replied "Take Him yourselves, and judge Him according to your law."

With this conclusion we are unable to coincide. It would rather seem that it was because the Jews had refused to answer his plain demand for a specific charge, and had thus shown that they had not yet condemned Jesus upon any definite or adequate accusation, that Pilate enjoined upon them to take Him back to the Hebrew court-room and determine: first, whether some specific capital charge had been made against Him, and: second, if so, then that they hear evidence and adjudge accordingly. For both these steps were necessary to effect a legal adjudication. In other words, Pilate seems to have thought that what ought to have been done if Jesus was an evil-doer, had not been done by the Sanhedrists, else they would have brought to him evidence of condemnation for a certain crime, and so have been able to respond pointedly to his demand: "What accusation bring ye?"[3] with some specified capital judgment, which they desired to have him confirm and enforce.

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2. "Tr. of Jes.," Vol. 2, p. 102.

3. John, 18; 29.

That would have been to "judge him."[4] Furthermore, to judge according to Hebrew law would have involved a postponement of proceedings until a legal day had arrived—and Pilate may well have had this point in mind. Indeed, he may have had suspicions of a farcical proceeding already had, because what they had done was accomplished on a holiday, and was therefore without effect. He may also have realized that any present attempt on his part to do more than merely ascertain whether any definite charge had been laid against Jesus would render proceedings before himself nugatory, for the same reason.

But there is another view, shared by many biblical and other writers, as to why Pilate thus suggested that the Jews take and judge Jesus,—i. e., that he spoke in derisive irony, knowing that they had not the power to condemn and punish Him,—or, according to Rosadi and some others—to even try such a case, and that, knowing this, and that they knew it, he took this opportunity of flinging into their proud and defiant faces the challenge which all understood they could not meet, and thus grind them into the abjection of disgraceful defeat.

They were about to say in reply, but had not yet said: "It is not lawful for us to put any man to death."[5] This thought being in their minds, Pilate's taunt, it is said, was the more bitter, since that they could not capitally punish was because the galling bonds of Roman sovereignty had deprived them of that right. Rosadi—who likens this incident to the admonition thrown at Shylock to take "a pound of flesh but not a drop of blood"—believes that Pilate did not intend to yield jurisdiction to the Jews; that the interpretation given by people to this "retort"

4. Id., 31.
5. Id.

to them, that is, that either the Procurator thereby conferred upon them power to execute capital sentence, or recognized in them power to punish for some lesser crime, is inadmissible as to the former supposition, since the Jews would have taken him at his word, while admissible as to the latter, "because jurisdiction of capital offenses had been withdrawn from the Sanhedrin, but not that of minor crimes."[6]

Pilate's desire to rid himself of the case may have resolved him to grant to the Sanhedrists power to execute capital sentence. But if so, and he had been so understood by them, nothing short of a fanatical determination to cast upon him the odium of putting the Accused to death would, in all human probability, have prevented their eager acceptance of the proffer. Some writers[7] believe this determination resolved them to suggest that they had not competency to execute such sentence. Be that as it may, we regard it as not at all conclusive that Pilate intended to grant that right. He may have reasoned against its exercise by either tribunal—that if the Jews, upon again essaying a conviction, should fail, not only would he not be troubled further with the case, but Jesus would either be released, or escape death.

But on the theory that Pilate intended to exercise the *imperium* in reestablishing in the Sanhedrin the power of capital punishment, what a precedent would here have been set by the head of the Roman provincial administration! Had he done this, and had the Sanhedrists acted accordingly, how could he expect to escape the double extremity of further exercise of capital execution by Sanhedrists thus encouraged, and a reckoning with the erratic and jealous Tiberius, for presuming to exercise that power

6. "Tr. of Jes.," p. 235.
7. See Chandler, "Tr. of Jes.," Vol. 2, p. 103.

in such connection, without consulting the emperor who had given him official life? Thus, we believe, would Pilate have reasoned, had the thought of conferring upon the Jews the *jus gladii* seriously entered his mind, amid the administrative rocks and shoals confronting him.

It now appears more clearly, that the proceedings ending with a disclaimer of Jewish competency to execute for a capital offense, were regarded by the Evangelists as merely preliminary to the real investigation before Pilate. For now St. John's narration continues with a reference to the Procurator's asking Jesus concerning His kingship,[8] as we have seen was true of the other Evangelist—St. Luke[9] giving the *cue* to the reason for this inquiry by relating the accusations of the Sanhedrists.

"I find no fault in this man" declared Pilate to the Jews, in response to their accusations concerning sedition, forbidding tribute to Caesar, and "saying that He Himself is Christ a King." (Luke 23; 2, 4). They had furnished no sworn testimony, nor had there been any judicial investigation by Pilate, further than to interrogate Jesus and to observe His calm and singularly impressive demeanor.

But these steps sufficed to convince Pilate that he was dealing with an innocent Man. However, the proceeding had not ended; for with redoubled energy and vindictiveness the accusers rallied to the attack with the charge that throughout Judea "and beginning from Galilee" He had stirred up the people. "But when Pilate heard it, he asked whether the man were a Galilean. And when he knew that he was of Herod's jurisdiction, he sent him unto Herod, who himself was at Jerusalem in these days." (Luke

8. John, 18; 33.
9. Luke, 23; 2, 5.

23; 5-7).

This charge, as related to Galilee, seems intended to intensify the previous accusation of high treason, and to poison Pilate's mind against Jesus as being from Galilee, "the hotbed of riot and sedition" in those days. The Galileans "as champions of Jewish nationality were the fiercest opponents of Roman rule," and were finally the last to be driven from the battlements of Jerusalem. Chandler,[10] who recognizes this fact, continues: "As advocates and preservers of the purity of the primitive Jewish faith, they were relentless foes of Pharisaic and Sadducean hypocrisy as it was manifested by the Judean keepers of the Temple. The Galileans were hated therefore by both Romans and Judeans; and the Sanhedrists believed that Pilate would make short work of Jesus if he learned that the prisoner was from Galilee." But instead, the Procurator was of that cowardly spirit that he grasped eagerly an opportunity of evading responsibility in judging Jesus, and deemed it good fortune favoring his design, when informed that He was from Galilee; as Herod, Tetrarch of Galilee, was then in Jerusalem attending the Passover.

10. "Tr. fo Jes.," Vol. 2, p. 117.

CHAPTER XXX

Jesus Before Herod—On "Slope of Zion"—Herod's Antecedents, The Tetrarchy—Herod's Jurisdiction Not Tenable—Pilate's Motive in Resort to Herod, Its Effect on Herod—Continuous Offense, From Galilee to Jerusalem—What Court Had Competency?—Jesus' Silence Before Herod—Herod's Fear—Luke's Version Confirmed by Tradition—Priests' Accusations Before Herod—No Judicial Disposal by Herod—Jesus Returned to Pilate—Again Declared Innocent.

TO the palace of the Maccabees, Herod's accustomed stopping place when in the Holy City, they therefore took Jesus.

It may be, as assumed by Chandler[1] and others, that He was under escort of a detachment of the Pretorian Cohort in this transfer. It does not seem to the present writer that such presumption can safely be indulged in, in absence from the record of any tangible evidence to that effect. And we have seen that in the "Passion Play"[2] the priests and rabbis are found proceeding towards Herod's residence "bringing Jesus with them, led by the soldiers of Herod." It is believed that the first occasion of action by Roman soldiers in connection with the trial of Jesus was when, before Pilate, they scourged, taunted and othewise abused Him.[3]

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1. "Tr. of Jes.," Vol. 2, pp. 118, 119.
2. Chapter VI.
3. Matt., 27; 27-31. John, 19; 2.

This palace was "on the slope of Zion,"[4] a few streets to northeast of the Pretorium of Pilate. Of this Herod Antipas it may be said that the pages of history, sacred and profane, prove him to have been of low and contemptible instincts, steeped in the debasements resulting from pursuit of sensuous passion; a petty ruler without scruples, a base and unnatural criminal, the son of a murderer. Chandler says of him that as compared with him, Judas is "eminently respectable,"[5] in that the latter proved at last, under the spur of remorse, to have had a conscience. He was that evil and contemptible one of whom Christ said in pure contempt: "Go ye, and tell *that fox*, Behold I cast out devils, and I do cures today and to-morrow, and the third day I shall be perferred." (Luke 13;32).

This Herod had murdered John the Baptist; his father was "ten times married and had murdered many of his wives";[6] and the son was enslaved to a corrupt woman. That father was known as Herod I, surnamed the Great, whose vileness was manifested also by his atrocious massacre of the innocents at Bethlehem. His son the Tetrarch took the provinces or regions of Galilee and Perea, two of the eleven comprising the kingdom,—under the testament of his father, confirmed by Augustus,—the testator being a client prince who could not, therefore, dispose of his realm without Rome's consent.[7] The Tetrarchy, of Roman political origin in import, was literally a fourth part of a province under a Roman governorship.

To escape responsibility, and to conciliate Herod

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4. Chand., "Tr. of Jes.," Vol. 2, p. 119.
5. Id., p. 120.
[illegible] p. 121.
[illegible]. 119. Rosadi, "Tr. of Jes.," pp. 132, 133.

—these are the motives ascribed to Pilate in sending Jesus to the Tetrarch.[8] There had been trouble between these two rulers—the cause not precisely known. The slaughter of the Galileans at Jerusalem may have been the cause—or the effect, of the differences. The occupancy of the Palace of Herod might have caused a jealousy in Pilate.

"And when Herod saw Jesus he was exceeding glad; for he was desirous to see Him for a long season, because he had heard many things of Him, and he hoped to have seen some miracle done by him." (Luke 23; 8).

Rosadi at this point observes: "It is also to be noted that the declaration here made of Jesus being a Galilean confirms his origin, which was from Nazareth in Galilee, and does not refer to his birth, which took place at Bethlehem in Judea."[9]

Regarding Herod's jurisdiction, Rosadi says he "had criminal jurisdiction over his subjects,"[10] citing St. Luke[11] on this head. Yet his subsequent treatment of this interesting question leads to much doubt as to Herod's competency under the circumstances surrounding him. He states, speaking of Pilate's action: "This particular evasion could not well have been more clumsy or more unfortunate from the point of view of either Mosaic or Roman law."[12] He then refers to the degrees of power of the Jewish tribunals, and concludes that the Great Sanhedrin

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8. Rosadi, "Tr. of Jes.," pp. 242, 243, 245.

9. "Tr. of Jes.," p. 249, note 1.

10. Id., p. 242.

11. Luke, 23; 5, 7. "And as soon as he knew that he belonged unto Herod's jurisdiction" (verse 7). This of course meant his jurisdiction in his Tetrarchy of Galilee—not in Jerusalem.

12. "Tr. of Jes.," p. 243.

was "the sole tribunal competent to try" Him. "This court judged for better or for worse, so that the trial before Herod must have been the repetition of an abuse. In virtue of what exception could there have been resort to the Tetrarch of Galilee and Perea, if these regions, like the whole of Syria, were under Roman hegemony? In this case, to the defect of jurisdiction was joined the want of competence, because, under the supposed but not admissible jurisdiction of the Hebrew authorities, the Grand Sanhedrin alone would have been competent to try the case. Moreover, the improvised competence of Herod would suppose a criminal jurisdiction which at the time of these events was no longer conferred upon the kings. Such a jurisdiction is doubtful and disputed. It was, at all events, curtailed at the time of the government of the kings."[13] And after citing from biblical accounts the setting up of Hebrew judicial authority in Judea by David and Jehosaphat, he concludes—aside from whether Herod had kingly power—that he had "neither the jurisdiction nor the competence" to judge Jesus the Galilean. He adds: "It would have been curious to see with what forms of a regular tribunal, momentarily established at Jerusalem, he could have carried out a criminal trial or put a sentence of death into execution."[14] Jurisdiction under Roman sovereignty, he proceeds to say, resided in the Governor "by right of conquest of war, but competence was also vested in him on the ground of territoriality, always remembering the character of the offense alleged against Jesus. His prosecutors insisted tenaciously upon His answering to a charge of *continuous* sedition, as lawyers call it. This offense had been begun in Galilee and ended in

13. Id.
14. Id., p. 244.

Jerusalem—that is to say, in Judea. Now it was a rule of Roman law, which the procurator of Rome could neither fail to recognize nor afford to neglect, that the competence of a court territorially constituted was determined either by the place in which the arrest was made, or by the place in which the offense was committed,"[15]—citing Roman laws.

In other words: Jesus, although a Galilean, was arrested at the gates of Jerusalem—in Judea. His alleged offense had been committed for the most part, and as to the final acts, in that city and in other Judean localities. "In *continuous* offenses competence was determined by the place in which the last acts going to constitute the offense had been committed." And so "no justification whatever existed for determining the court with regard to the prisoner's origin"—the ground on which Pilate evidently acted in sending Jesus to Herod. Rosadi regards this question as to Herod's right to try Jesus as superfluous, because if Pilate intended to strip himself of power he should have "respected the jurisdiction and competence of the Grand Sanhedrin," which he thinks the only power that could have dealt with the case; and that Pilate should not have raised a question between himself and Herod, Regent of Galilee. "It is only between judges of the same judicial hierarchy that a dispute as to territorial competency can arise. Between magistrates of different states there can only exist a contrast of power and jurisdiction."[16]

"Then he questioned him with many words, but he answered him nothing."[17] This before Herod.

Concerning Jesus' refusal to answer Herod, Ro-

15. Id.
16. Id., pp. 244, 245.
17. Luke, 23; 9.

sadi, after declaring that it would be sophistical and specious to say that, as to Jesus' relations to them, Herod was not Caesar, declares that His attitude toward the constituted authorities "was not one of subservience, but one of pure and simple indifference, as His earthly mission aimed at neither overriding nor replacing them." And the recognition of the authority "does not entail any cringing to" its abuse. "Who," he asks, "knows what the questions were which the Tetrarch put to the Galilean? His silence is easily explained by the unseemly nature of the question," which Strauss thinks "displayed simple curiosity."[18] It is clear that Herod's inquiries indicated the desire and peculiar pleasure of a weakling to witness some performance in the nature of a miracle by a supposed professor of marvelous doings, and that he had no thought of settling any question of guilt or innocence.

The concept of indifference towards all constituted authority, thus reflected by Rosadi, is indeed the keynote to Jesus' posture of silence, which "aimed neither at overriding nor replacing" earthy power. When all these theses concerning His so-called trials shall have been exploited and the questions of judicial competency are exhausted, the simple fact that Christ did not and proposed not to go counter to, much less override, either Hebrew or Roman authority in the process of propogation of His spiritual and ethical kingdom, will be the real solvent of the whole case, in its legal as well as its other aspects.

Herod, from once having regarded Christ as the risen Baptist and with the awe which such a thought would suggest, had, says Chandler, "come to look upon Christ as a clever impostor whose claims to kingship and Messiahship were mere vulgar

18. "Tr. of Jes.," p. 246.

dreams."[19] The fame of His miracles had, indeed, traveled over Galilee, but it seems that until now Herod had never seen Him. That he felt complimented in having this famous prisoner sent to him for judgment is quite probable. But his fickle brain and dissolute tendencies preclude the idea of grasping the responsibilities of a trial of one who was supposed to have challenged Hebrew authority, and who had been before the Roman governor charged with sedition. Nor could he forget that Jesus' followers in Galilee would have to be reckoned with were their Chief the subject of his condemnation.

But this much is seen in the biblical account: that Jesus' silence under Herod's many inquiries, which were doubtless juridically aimless, had vexed and puzzled him, while he had beyond doubt stirred the priests and rabbis who stood there His accusers, to renewed anger and invective. For they "stood and vehemently accused Him."[20]

The keen legal insight of Christ, shown at other stages of His trial and in His daily teachings and discussions, assures that He here saw that Herod, sitting outside of his province, had no jurisdiction over the case. To the fact that no investigation of any formal charge is shown to have been here set on foot, add that no evidence to sustain such a charge is shown to have been offered, and it is seen that no legal requirement of a response or plea by way of defense existed. No lawful ground existing, it is not difficult to perceive that Jesus would not be found parleying with this idle and disgusting scoundrel, who was then and there groveling in his ridicule of the Saviour.

Rosadi regards the fact that only Luke records

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19. "Tr. of Jes.," Vol. 2, p. 122.
20. Luke, 23; 10.

this transaction before Herod, while the other Evangelists make no mention of it, as "unimportant." That "it is confirmed by old tradition and is to be met with in Justin." And after seeking to refute the theory that St. John could not have been present to report it, he concludes: "The only explanation of the silence of the three evangelists is that they did not ascribe such importance to the event as to consider it requiring mention."[21]

"And Herod with his men of war set him at naught, and mocked him, and arrayed him in a gorgeous robe, and sent him again to Pilate."[22]

It is probable, in the absence of evidence in the Gospels, that the Sanhedrists made substantially the same accusations before Herod as had been made before Pilate—that He claimed to be "Christ a king," which Chandler thinks "best explains the mockery which they sought to heap upon Him; for in ancient times, when men became candidates for office, they put on white gowns to notify people of their candidacy;"[23] And Tacitus relates that white garments marked "illustrious persons,"[24] that tribunes and consuls wore them when marching before Roman eagles.

Contrary to the evident expectations of Pilate, Herod had failed to try or otherwise judicially dispose of the case. This action was construed by Pilate in the sense of an acquittal, however; since he thus reported to the Jews:

"And Pilate, when he had called together the chief priests and the rulers and the people, said unto them, Ye have brought this man unto me, as one that per-

21. "Tr. of Jes.," p. 246.
22. Luke, 23; 11.
23. "Tr. of Jes.," Vol. 2, p. 127.
24. Tacitus, "Hist.," II, 89.

verteth the people; and, behold, I, having examined him before you, have found no fault in this man touching those things whereof ye accuse him: No, nor yet Herod: for I sent you to him: and, lo, nothing worthy of death is done unto him. I will therefore chastise and release him."[25]

This language indicates that Pilate considered that Herod had in fact passed upon the case and found Christ not guilty of the charges brought against Him before the Procurator—sedition, etc. Also, that he understood those charges as embracing a capital offense. Rosadi believes the charges were substantially repeated before Herod: "Before Herod it was still the scribes and priests who repeated the charges pertinaciously." He also speaks of the intuitive belief of common people in "the episode narrated by St. Luke, as arousing keener pity," and compares the luckless prisoner of to-day who, in his hopeless steps from court to prison, "spontaneously reverts to the prisoner who was led from Pilate to Herod, and from Herod to Pilate" before his thought "turns to find upon the height of Golgotha the consoling example of a great and final injustice."[26] He further observes: "Pilate, on the return of Jesus, must have felt convinced that not only had his first expedient proved an absolute failure, but that his position had been thereby rendered even more difficult." And as showing Rosadi's belief that a trial was had before Herod, he adds: "Herod had not met his offer by a preliminary refusal to act, as he might have done considering his manifest incompetence. He had, on the contrary, delivered a judgment in uncompromising favor of the Accused in whom he found nothing justifying a condemnation. The acquittal by the Tetrarch increased the hesitancy of the Gover-

25. Luke, 23; 13-16.
26. "Tr. of Jes.," pp. 247, 248.

nor."[27] While it is true, for aught that appears in St. Luke's account, that Herod may have acquittted Jesus in a sense similar to that in which Pilate had already dealt with Him, and thus Pilate may well have supposed that the Tetrarch, in failing to "do unto him"[28] anything worthy of death—that is, sentence Him to death—had acquitted Him, yet there seems to be wanting a record affirmatively showing a Herodian judicial acquittal, but rather it seems to have been a mere spectacular inquiry in a spirit of brazen ribaldry, regardless of judicial form or substance, ending in a humiliation of the Accused in which only an abandoned libertine could stoop to indulge.

27. Id.
28. Luke, 23; 15.

CHAPTER XXXI

Proceedings Before Sanhedrists and Before Pilate Were Two Trials—Pilate's Non-Demurrer to Sanhedrist Attempt to Condemn for Sedition—Procurator's Right to Investigate Religious Offense—Jews Attempted to Try Jesus for Sedition—Both Tribunals Attempted to Try Him for Blasphemy—New, or Re-Trial, Not Mere "Countersign" of Sanhedrist Condemnation, Was Attempted by Pilate—No "Review" of Record, as on Appeal—Pilate, Though Imperfectly, Tried the Case.

WE have entitled this study of the proceedings before the Sanhedrin, Herod, and Pilate the "Mis-trials" of Jesus.

It appears to the writer that there were, in fact and law, two trials, pretended or pretextual, if not real. And this, whether sedition against the kingdom of Judea, or against the Roman empire, or blasphemy, be deemed the sole charge. In order words, we ascribe to the Sanhedrin for the purpose of this discussion, jurisdiction to *try* for seditious acts, and for blasphemy.

We have already pointed out[1] that the Hebrew tribunal had competency to administer either Jewish or Roman law; and there seems to be no valid reason for denying the jurisdiction when sedition was involved. On this head it may be observed that no hint is found in the Biblical account, of Pilate's hav-

1. Chapter XXIII.

ing demurred to the implied action of the Sanhedsists in having examined into alleged seditious acts of Jesus before He was brought before the Procurator. And upon the theory that *execution* of sentence for such acts was beyond Sanhedrist competency and was vested solely in Roman authority, such jurisdiction in the Jewish court would consist, juridically, with Roman control in cases involving attacks upon her sovereignty.

And Jesus had, moreover,—with or without Pilate's knowledge—made it clear that as regards the Empire at large, He taught nothing but loyalty thereto. In his memorable reply to the Pharisees and Herodians He had declared: "Render unto Caesar the things that are Caesar's." (Mark 12; 13-17). And as concerns Roman competency to try a charge religious in character, under Hebrew law, we believe it has been shown that under the law and authorities, Jesus might have been tried by Pilate upon such charge.

In this connection, the position taken by Chandler, that "it is certain that a Roman governor would not have allowed a Jewish tribunal to try an offense involving high treason against Caesar", which "was a matter exclusively under his control"[2]—the very ground on which he concludes that there were two trials,—is respectfully dissented from; partly because it does not meet the point as to what the Jews actually did prior to taking Jesus before Pilate, and partly because his proposition, regarded as assuming that the Procurator, in supposedly denying jurisdiction to the Sanhedrin, stood upon tenable ground, is believed to be erroneous. What the Jews actually assumed or pretended to do determines whether it amounted to a trial in itself apart from

2. "Tr. of Jes.," Vol. 2, p. 22.

the after proceedings before Pilate, in the sense in which the proceedings are now under consideration. What Pilate would or would not have allowed the Sanhedrists to do does not, it is submitted, determine that question.

In assuming that the Roman court could try Hebrew religious offenses, we also necessarily dissent from Chandler's further postulate that "the Hebrew trial was necessary, because a religious offense was involved with which Rome refused to meddle, and of which she refused to take cognizance in the first instance."[3] Such presumed refusals would not, in the light of the law and authorities giving her jurisdiction, alter the *right* of Rome to try those offenses.

Now, the Gospel records make it clear enough as a factual premise, on the question of two trials or one, that the Jews did in fact at first assume to try Jesus for sedition. All four of the Evangelists make this substantially clear.[4] And they also furnish evidence that before Pilate the accusers led him to understand that Jesus' acts were, in their view or under their insistence, seditious and, colorably at least, treasonable. "Art thou the king of Jews?"[5] "Ye have brought this man unto me as one that perverteth the people;* * I, having examined Him before you, have found no fault in Him."[6] "If thou let this man go, thou art not Caesar's friend: whosoever maketh himself a king speaketh against Caesar."[7]

Here, then, Jewish and Roman tribunals are found trying, each by itself, for sedition. We are not here

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3. Id., p. 21.

4. Matt., 26; 61, 62. 27; 11, 12. Mark, 14; 58-60. 15; 2-4. Luke, 23; 2-5. John 18; 33-37. 19; 2-6, 15.

5. Matt., 27; 11.

6. Luke, 23; 14.

7. John, 19; 12.

concerned with the question whether the Jewish court could *execute* sentence for sedition, or for blasphemy —execution of sentence was not and is not to-day necessarily a part of a *trial,* under any system of criminal procedure.

But it is equally certain, from the same sources, that both the Sanhedrin—or its pretended equivalent —and the Procurator attempted to try Jesus for blasphemy. No further descent to proofs in detail is necessary to make clear what the Hebrews did on this head. The "whence art thou"[8] of Pilate is the substantial conclusion of that quest before him. And while the Roman tribunal did not here "take cognizance in the first instance," it did not on the other hand decline investigation, although "a religious offense was involved."[9]

We are led to conclude that a new trial, or retrial, was had before Pilate, and not a "mere countersign"[10] of the Sanhedrist condemnation, because a hearing before him seems to have been essential to a judicial determination by him of the question of guilt or innocence of Jesus, and because the Gospel record reveals what we believe amounted to a separate trial before him.

Seek as one may, without drawing too largely upon the imagination, for a solution of the question as to how Pilate could adjudge upon Jesus' guilt or innocence without going into the facts substantially as though the case had come before him in the first instance—the mind is not satisfied. He certainly did not review a record, as on appeal. And we have

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8. Id., 9.

9. Chandler, "Tr. of Jes.," Vol. 2, p. 21.

10. Id., p. 22. The term is used by Chandler in referring to what he presumed the Sanhedrists endeavored to secure before Pilate, viz: "a mere countersign to their decree."

seen that Jesus, not being a Roman citizen, probably could not appeal, juridically, to the Roman power. No record of fact was presented to Pilate, either as on appeal or for review.

Schurer, in referring to execution of Sanhedrist capital sentence by Roman courts, says "the judgment required to be ratified by the authority of the Procurator."[11] The pertinency of the word "ratify" in this connection seems doubtful, since it presupposes a void act made valid by the Procurator; while a Sanhedrist judgment of death was, upon the theory on which we have all along proceeded, valid—its *execution* only being beyond Jewish competency. But how could he ratify such judgment without himself investigating the issue of fact, upon evidence? Ratification itself rests upon knowledge of the premises under which the act ratified was done.

Geib says "the confirmation of the Procurator was required." Black's Law Dictionary thus defines "confirm:"[12] To complete or establish that which was imperfect or uncertain; to ratify what has been done without authority or insufficiently.

From all of which it would appear that the Sanhedrist condemnation was either imperfect, insufficient, or void. If that theory is adopted, then such supposed defects could not be investigated and determined upon without looking into the evidences which led up to it—either by a re-examination of the self-same witnesses used before the Sanhedrin, or by adducing new testimony.

But Pilate tried the case—however imperfectly or inadequately—as is believed to have been shown.

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11. "The Jewish People in the Time of Jesus Christ," 2nd Div. I, p. 187.

12. "Geschichte des romischen Criminal processes."

Jesus, before him, "was accused of the chief priests and elders" (Matt 26; 12). "Hearest thou not how many things they witness against thee?" (Id 13). "accused him of many things." (Mark 14; 3), "behold how many things they accuse thee of," (Id, 4). "And they began to accuse him," (Luke 23; 2). "I find no fault in this man." (Id. 4). "Ye brought unto me this man as one that perverteth the people: and behold, I, having examined him before you, found no fault in this man touching those things whereof ye accuse him." (Id. 14). "What accusation bring ye against this man?" "Art thou the king of the Jews?" "Art thou a king then?" "I find no crime in him." (Id. 33, 37, 38). "Behold, I bring him out to you, that you may know that I find no crime in him." (Id. 4, 5, 6). "Whence art thou?" (Id. 9).

Further evidence going to show an independent investigation by Pilate under Roman law, as against one under Hebrew law by the Jews, is found at the outset of the proceedings before Pilate: "If this man were not an evil-doer, we should not have delivered him to thee." "Take him yourselves and judge him according to your own law." (John 18; 29-31). The supposition that there was irony in this proposal, or an implication that by acting upon it those led by Caiaphas would run afoul of legal impediment as to execution of sentence, but makes it clearer that Pilate contemplated a proper proceeding before himself, in the sense of an independent judicial inquiry, in order to determine the merits of the case.

The writer finds himself forced, from a consideration of the Gospel accounts from which the foregoing quotations are made, and in the light of other evidences relating to jurisdiction,—to these conclusions: First, that those narratives leave no substan-

tial ground upon which to premise that Pilate sought to examine into the very evidences which the Sanhedrists themselves had adduced or pretended to have arrayed against Jesus,—in other words, he did not attempt to merely ratify their conclusions by learning what the testimony, if any, that they had heard, was, and then adjudicate upon the question of error which would thus be involved, as on review, or otherwise. Second: That those accounts show beyond reasonable doubt that he did go into an independent investigation of Jesus' guilt or innocence, and that he pronounced Him guiltless of any crime of which the Jews sought to accuse or did accuse Him. And while he did not—as he certainly should have done,—require sworn testimony to be adduced, yet the unmistakable character of his attempt to get at the truth as to what Jesus had or had not done, stamps the proceeding with earmarks of independent inquiry and conclusion.

No warrant for presuming that Pilate acted upon the theory, or entertained the idea that he was called upon by the Sanhedrists to merely give his formal order of execution of their condemnation to death of Jesus, can be found in the Gospel narratives, whatever may have been the intent of His accusers before the Procurator. Rather, the mind is led to perceive therein, inquiry—such as it was—for and by himself, into the issue at large.

CHAPTER XXXII

Pilate's Chastisement of Jesus Illegal—Release of a Prisoner, Custom of Roman Origin—Was "Private Rescission" the Ground? Pilate's Suppose Tactics Herein—Prosecutor Must Invoke Process of "Private Rescission."

ROSADI thus characterizes the promise of Pilate to chastise Jesus: "This promise was a second expedient not more legal or more fortunate than the first. If the prisoner was guilty, He deserved the punishment appropriate to His crime, and this punishment could not be a mere chastisement. If he was innocent, it was not right that he should be chastised at all. It appears that the people were not satisfied with the proposal, and that they gave vent to manifestations, which caused the Governor to turn suddenly from this expedient to another"[1]—that of release of the prisoner.

The custom of release by the Governor, at the Passover, of a prisoner selected by the people, is regarded by Rosadi as being of Roman, not of Jewish origin. While all of the four Evangelists[2] record in substance this custom as stated, John alone makes Pilate refer to it as apparently a Jewish custom: "But ye have a custom, that I should release unto you one at the Passover: will ye therefore," etc. (John 18: 39).

Rosadi concludes that the majority of the inter-

1. "Tr. of Jes.," p. 248.
2. Matt., 27; 15. Mark, 15; 6. Luke, 23; 17.

preters who have debated this subject have inclined to regard that practice as of Jewish origin, "and some have gone so far as to perceive in the custom a symbol of the liberty obtained by Israel on its issue out of Egypt at the first Passover. The opinion is no less erroneous than the conjecture is arbitrary. The question can only be resolved by reference to the fountain-head of Mosaic and Roman law in order to know if and how the usage was sanctioned by one law or the other." He then refers to the tracing out, in Hebrew law, "that any idea involving condonation of the penalty was irreconcilable with the principles and provisions of the law of Moses." That it was regarded as divine, the kings themselves being "deprived of the prerogative of mercy," having, indeed, contrary power of supplementing the law so as to thereby find warrant for condemnation of the guilty. He adds: "Search the Mosaic law as we will, we find not a single provision revealing the institution of mercy among the Jews. We must then seek in the Roman law for the juridical foundation of the prerogative which Pilate desired to exercise in favor of Jesus, and which the people claimed for the benefit of Barabbas." In the Roman system of criminal procedure he finds exceptions giving rise to "extinction of the penal sanction"—that of indulgences. "In one of these we must find the custom of liberating a prisoner on the occasion of a public solemnity, which the Evangelists assert to have been adopted by the Roman Governor in the Judaic Province."[3]

These Roman institutions, involving the release of a prisoner from the sanction of a judgment of conviction, are: Amnesty; and general pardon, or act of grace. Amnesty is from the Greek—"forgetful-

3. "Tr. of Jes.," pp. 250, 251, 254.

ness," and pertains to punishable deeds "prosecuted or to be prosecuted," and is expressed in clemency in the head of the state, by decree. It is general, comprising a whole class of offenders. While the general pardon is not absolute, "because it does not cut short or impede the penal action, but only condones entirely or commutes in part the punishment." The act of grace is "a singular and personal measure condoning wholly or in part or commuting the penalty already inflicted by way of sentence."[4]

After passing through the regal and republican periods of Rome, and specifying the forms of indulgences thereunder, Rosadi proceeds to define "the merciful exceptions to the penal sanction then obtaining, under the names of indulgence and rescission; the latter (abolitio) having the effect of "extinguishing the penal action with respect to a whole category of offenses. It was granted upon the occasion of public festivals, as, for example, upon the birthdays of the emperor, * * * upon occasions of public rejoicing and welfare, * * * upon the occasion of public thanksgiving, or upon the celebration of other acts of divine worship. Amongst these latter cases, one became of constant and periodical recurrence under the Christian Emperors, but not before 367 A. D., this was the amnesty granted at Easter in every year, just as amongst the Hebrews in Palestine." Applying these Roman laws to Pilate's action, he concludes: "It was not purgation of the capital sentence, for which scourging could be substituted, because scourging was not a punishment either appropriate or proportionate to the charge, * * To judge from first appearance it could have been nothing but an indulgence and a rescission." And these

4. Id., p. 255.

prerogatives (rescission and indulgence) were, he affirms, during the early days of the Empire, lodged at first in the Senate and Prince together; subsequently in the Prince alone. "This power could never be delegated by the Prince, so that the Governor of the province could in no way stop the course of an action or of a sentence of punishment; the documentary evidences of Roman law go even to prove that he was expressly prohibited." He concludes that Pilate was "unable to rescind a sentence which had been passed upon by the Sanhedrin, or to revoke a judicial action which had taken place before him under riotous circumstances. * * Neither the one prerogative nor the other was granted him, either on the ground of indulgence or on that of public rescission."[5]

In other words, there was no way, by operation of the Roman laws referred to by Rosadi and above indicated,—in which Pilate could legally release either Jesus or Barabbas from the penal obligation, or sanction of a judgment or sentence for crime.

But Rosadi finds another Roman law under which such a release could have legal effect. And he proceeds: "There was, however, one other road open to him, and which we must regard as that which he actually intended to follow: the road of private rescission. This was in fact the only exception to the penal sanction which the prosecutor could request of the magistrate pro tribunali, who might grant it if it appeared to him that the demand was prompted by just motives and was without an unlawful object. There were just motives, such as error, overhaste, or overheadtedness on the part of him who had brought the accusation, but from which he had afterwards desisted. Pilate must have thought that there was at least reason to suspect an error on the part of Jesus'

5. Id., pp. 255-258.

accusers, since the haste with which they made their charge a State affair was evident, and even more evident was the heat with which they demanded the prisoner's death." He proceeds: "The populace, and through and with it the Sanhedrin, was the prosecutor of Jesus. The Governor, before whom the charge was necessarily brought, was the judge. It was therefore for the people to ask and for the Governor to grant a prisoner's freedom. But Pilate, who was eager to try the fortune of this final expedient, wished to discover whether the people would be inclined to reconsider their determination; he wished to draw them into exercising the prerogative of which the initiative rested with them. He, therefore, did not merely propose the release of Jesus, but the alternative between Jesus and Barabbas."[6]

It is seen from the foregoing that this Roman law of "private rescission" required, in order to become operative in a given case, that the prosecutor—the private party who was responsible for the prosecution—must himself indicate his desire to withdraw himself from the status of a prosecutor—or at least that, being a prosecutor, he recedes from his attitude or desire to pursue the prisoner as one charged with crime. This element of a juridical indulgence as effective judicial clemency under the Roman law, thus brought into the light of discussion by Rosadi, is believed to be not only novel in connection with the subject of the trial of Jesus, but as being not improbable ground upon which Pilate mentally proceeded in seeking Jesus' release. And Rosadi brings out the phase of this Roman law which prohibited Pilate from *himself* taking the initiative in that direction, as follows:

"Had the right of pardon possibly consisted in a

6. Id., pp. 258, 259.

power of mercy less circumscribed by private rescission, the Vice-Governor of Judea would not have been under the necessity of entirely submitting to others a custom which he would so willingly have brought to bear himself. With this compulsory interpretation another detail mentioned by the Evangelists agrees—how at the feast the Governor was wont to release unto the multitude one prisoner whom they would (Matt. 27; 13)—because here the custom does not refer to an extra-legal practice, but to a usage consisting precisely in the application of a legal enactment upon a periodical occasion of public joy and thanksgiving to God, such as the Passover was to the Jews."[7]

But somehow in the crucible of fate it was ordained that not the Nazarene, who was all guiltless, but the robber convict Barabbas, was within the whim of the hour as the subject of clemency at the behest of the Temple authorities—who really led and seem to have forced the voice of the people on that Passover morning. And so, as Rosadi observes, Pilate was confronted with the duty of restoring Jesus to liberty by declaring His innocence and acquitting Him—a responsibility he was unwilling to assume; that he ignored a vital rule of procedure by failing to seek or discuss a single proof.

7. Id., pp. 259, 260.

CHAPTER XXXIII

Release of Barabbas—Message from Pilate's Wife—Sanhedrists' Change from Political to Religious Charge—Roman Mythology in this Connection—Power "From Above"—Relative Sinfulness of Jews and Pilate Here Adjudged—"Behold Your King!"—The Crown of Thorns—Jews' Victory Over Pilate's Innate Pity of Prisoner—His Recreancy to Official Duty—"No King But Caesar," Sanhedrist and Procurator's Humiliation Here.

IT is assumed by some of the writers, not without probability from the attendant circumstances, that at the hour when Jesus was returned from Herod to Pilate, the people appeared in great numbers, to demand "the usual Passover deliverance of a prisoner." Chandler well observes that this arrival of "the crowd of disinterested strangers" was inopportune for the Sanhedrists who were demanding Jesus' life; that they "marked with keen discernment the resolution of the Governor to release Jesus" and were equal to the emergency; and he mentally sees them "whisper among the crowd that Barabbas should be asked."[1]

"And they had then a notable prisoner, called Barabbas. Therefore, when they were gathered together, Pilate said unto them, Whom will ye that I release unto you? Barabbas, or Jesus which is called Christ? For he knew that for envy they had delivered Him." (Matt. 27; 16-18).

1. "Tr. of Jes.," Vol. 2, p. 131.

If this freshly assembled multitude was composed of the common people of Israel, so that but comparatively few were of the hierarchy, Pilate's knowledge of the fame of Jesus among them and of His strong following by many of them, would naturally inspire him with the belief that their choice of a prisoner for release would be the Man who had so lately been hailed by them with hosannas when they brought Him into Jerusalem in the similitude of the Messiah.

"But the chief priests and elders persuaded the multitude that they should ask Barabbas, and destroy Jesus. The Governor answered and said unto them, Whether of the twain will ye that I release unto you? They said, Barabbas. Pilate saith unto them, What shall I do then with Jesus which is called Christ? They all say unto him, Let Him be crucified." (Matt. 27; 20-22).

An insurrectionist, robber and murderer was thus made the subject of choice with the multitude, as against the sinless and inoffensive Christ. And what Rosadi with reason ascribes to the strange influence of "collective suggestion,"[2] whose alchemy turns individual judgment—even sense into rashest folly and madness when operating in a heterogeneous crowd, not improbably swayed the choice in favor of release of Barabbas. He likens this scene to that of the martyrdom of Savanarola at Florence fourteen centuries later.[3]

"When he was set down on the judgment seat, his wife sent unto him, saying, Have thou nothing to do with that just man: for I have suffered many things this day in a dream because of Him." (Luke 27; 19).

This far from strange report accords with many

2. "Tr. of Jes.," p. 276.
3. Id., pp. 270-275.

another in ancient and modern times. Thus was Caesar warned by his Calpurnia, against the dagger of Brutus; heedless of the warning, he went to the Senate House to his fate.

Chandler records that in the apocryphal report of Pilate to the Emperor Tiberius, of the facts of the Crucifixion, these words of warning were given: "Beware said she to me, beware and touch not that man, for he is holy. Last night I saw him in a vision. He was walking on the waters. He was flying on the wings of the wind. He spoke to the tempest and to the fishes of the lake; all were obedient to him. * * * O, Pilate, evil awaits thee if thou wilt not listen to the prayer of thy wife. Dread the curse of the Roman Senate, dread the power of Caesar."[4]

If this dream was inspired, the medium of communication in that daughter of a lewd woman might be held in comparison with that of the Mary Magdalene, for whom the love of Jesus was manifested in such manner as to have immortalized her, resulting in her canonization.

But this suggestion of the dream, while doubtless causing momentary indecision in a man whose characteristics reflected resolution and its opposite in alternation, did not avail to save Jesus.

At this crisis in the proceedings before Pilate the Sanhedrists, who could not but have discovered in the anxiety and perplexity which engrossed him at this point, that he wavered under the double load which conscience and his wife's message imposed upon him, and which impelled him towards acquittal,—saw their opportunity in a change of base. Desperation, written in lines of hatred wrought up to frenzy, must have been manifest in their countenances as they made this new appeal to the Procurator:

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4. "Tr. of Jes.," Vol. 2, p. 133.

"We have a law, and by our law he ought to die, because he made himself the son of God." (John 19; 7).

Thus, at the verge of despair of conviction of Jesus, they changed from a political to a religious charge,—to the charge upon which, if any, they had themselves convicted Him in the outset.

The Romans possessed a mythology rich in its variety and its ascription of power to the sons of gods "who walked the earth in human form and guise. They were thus indistinguishable from mortal men. It was dangerous to meet them; for to offend them was to provoke the wrath of the gods, their sires."[5] How Pilate, steeped in superstitious dread instilled by that mythology, must have been moved by that uncanny missive sent him by his wife, until an inner fear all but resolved him to cut the Gordian knot by releasing the Accused! And now confusion would be in him intensified by this suggestion that Jesus had "made himself" the Son of God. Rome and Israel would now join in appealing to his soul to do justice according to the decree of the myths. Chandler here suggests: "Could not Jesus, reasoned Pilate, be the son of the Hebrew Jehovah as Hercules was the son of Jupiter?"[6]

Meanwhile, the Roman soldiers had in ribaldry enacted the immortal farce of the crown of thorns[7] —which the attendant staging of facts has crystalized into the kingly empurpling of the ages!

"Behold the man!"[8]

"Crucify him, crucify him!"

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5. Id., p. 135.
6. Id.
7. John, 19; 2.
8. Id., 5.

"Take ye him, and crucify him; for I find no fault in him."[9]

That he had "made himself the son of God"[10] caused Pilate to fear the more. Into the Pretorium a second time he took Christ. In doubt and amazement he asked:

"Whence art thou?" The Silent One, to Whom the word that would sound Him had not yet been spoken, remains voiceless.

"Speakest thou not unto me? Knowest thou not that I have power to crucify thee, and have power to release thee?" (John 19; 10).

This suggestion of earthly power gave the consummate Lawyer who faced His judge the *cue* which revealed that absolute defense which even a Pilate could sense, and which crowned the prisoner a Messiah:

"Thou couldst have no power at all against me, except it were given thee from above: therefore he that delivered me unto thee hath the greater sin."[11]

Here Jesus pronounced divine judgment between the Jews—or probably Caiaphas as representing His persecutors and their doings—and Pilate, as concerned their relative sinfulness in compassing His condemnation and impending crucifixion. Pilate's official power, springing "from above," had indeed been abused and he had sinned, in the scourging of Jesus. Yet it seems (for this is generally regarded as the true version of this passage[12]) that Jesus here imputes "greater sin" to those who "delivered" Him up to the Procurator and so *tempted* him to misuse

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9. Id., 6.

10. Id., 7.

11. Id., 11.

12. See, Dr. Hovey's Commentary on St. John, pp. 374, 375.

his power. Pilate had twice declared Him guiltless, yet had—to appease *them*—scourged Him. Still they had cried repeatedly for His crucifixion, notwithstanding. And Jesus, facing the cross and speaking in the Valley of the Shadow, to the Roman power and in presence of at least some others, if not the Loved Disciple himself, proclaimed to mankind that His most sinful oppressors were those who had handed Him over to Pilate. This utterance seems most significant of all words recorded in the Gospels as to where rested the real responsibility before God, for what was then and there being enacted.

Finding from this response still stronger evidence that Jesus claimed not earthly power or any menace to mortal empire, it is written:

"And from thenceforth Pilate sought to release Him; but the Jews cried out, saying, If thou let this Man go, thou art not Caesar's friend: whosoever maketh himself a king speaketh against Caesar."[13]

Then, according to John (19; 13), Jesus was brought forth and Pilate "sat down in the judgment seat in a place that is called the Pavement, but in the Hebrew, Gabbatha."

Then for the last time Pilate comes forth with Jesus to face His oppressors and to indicate to them his candid belief in Christ's innocence, though couched in his memorable taunt:

"Behold your king!" Or, by another version: "Lo, your king!"

This keenly sarcastic utterance of Pilate was spoken in derisive mockery of the Jews' claim that Jesus had aspired to regal authority over Israel or against the Roman state. The Nazarene, clad in the purple robe, thorn-crowned and bleeding from the scourging, was thus exhibited to the mob in an

13. John, 19; 12.

irony well calculated to deride that claim, and to cast odium and ridicule upon His persecutors in a different sense, indeed, from that in which the same spectacle was a cruel inhuman degradation of Christ Himself. And as to Pilate's own humiliation at this point, it may be said that his irritation to the verge of anger, aroused by that persistent and outrageous persecution, which had forced him to wholly inconsistent expedients in temporizing with the case, gave this utterance a strong tinge of self-condemnation. The gods of destruction were here playing havoc with name and reputation of prosecutors and judge.

Yet, beneath all else in Pilate's soul at that instant is visible his pity of the Prisoner, manifested in his plea for mercy towards Him at the hands of the assembly with whom, it is too plain, he was morally and politically too weak to cope.

"Away with him, away with him, crucify him." "Shall I crucify your king?" "We have no king but Caesar."[14]

This last appeal of the Jews to the suggestion of treason to the Empire, coupled with the declaration that they had no other king, was the last step in forced humiliation of the Sanhedrists to the most hateful bonds of Roman sovereignty. It had the two-fold effect of resolving Pilate to let the harrowing matter end in Jesus' execution, and of placing in his own hands the most galling of all admissions of submission of Jewish to Roman power and tyranny!

But the Jews were, for the time, the victors, no matter at what cost to pride and hypocrisy. They had won their case—Rome had lost it. Ages have had to speak to tell how much was that loss!

And the sudden response "We have no king but Caesar!" must have pierced that guilty judge to the

14. Id., 15.

very quick, as he thought of this appeal to Tiberius over the head of his deputy—an appeal that was to settle the case while exalting these Israelites, who despised both Emperor and Procurator, above the latter in the scale of power—thereby condemning him for his very impotency even as he sat enthroned in the *imperium!* The cringing humiliation of the Jews in thus recognizing Caesar's supremacy over Judea was the only leaven to Pilate's debasement which the predicament vouchsafed to him.

CHAPTER XXXIV

Pilate Still Temporizes—Washing One's Hands, a Jewish Custom, Was it a Symbolism, to Make Himself Understood?—"His Blood Be on Us," Fall of Jerusalem as Sequel—"Behold the Man!"—"By That Law He Ought to Die," Was this Suggestive of Roman Application of Jewish Law?—Rome Legally Responsible for Crucifixion—Scourging, Legal Aspects of—Roman Soldiers Here First Appear—No Lawful Trial Before Pilate.

AGAIN and again had Pilate fallen before religious fanaticism of the Jews. "And now," says Chandler, "the same fanatical rabble was before him demanding the blood of the Nazarene, and threatening to accuse him to Caesar if he released the Prisoner. The position of Pilate was painfully critical. He afterwards lost his procuratorship at the instance of the accusing Jews. The shadow of that distant day now fell like a curse across his pathway. Nothing was so terrifying to a Roman governor as to have the people send a complaining embassy to Rome. It was especially dangerous at this time. The imperial throne was filled by a morbid and suspicious tyrant who needed but a pretext to depose the governor of any province who silently acquiesced in traitorous pretentions to kingship. Pilate trembled at these reflections. His feelings of self-preservation suggested immediate surrender to the Jews. But his innate sense of justice, which was woven in the very fiber of his Roman nature, recoiled at the thought of Ro-

man sanction of judicial murder. He resolved, therefore, to propitiate and temporize."[1]

Still the frenzied rabble cried: "Crucify him! Crucify him!"

"Why, what evil hath he done?"[2] "Crucify him! Crucify him!"

Then was that act of real baseness and cowardice performed by Pilate:

"When Pilate saw that he could prevail nothing, but that rather a tumult was made, he took water, and washed his hands before the multitude, saying, I am innocent of the blood of this just man: see ye to it." (Matt. 27; 24).

Washing one's hands to attest one's innocence of murder was a Jewish custom. (Deut. 21; 6, 7).

Why did the Procurator resort to this act? Not from necessity, in thus seeking to bring out the fact of innocence of Jesus, since he had repeatedly declared in that presence that he had found no fault in Him. Was it the impassioned roar of the multitude and the babel of tongues, which furnished the occasion for this act of Jewish symbolism? The Jews "were instant with loud voices asking that he might be crucified, and their voices prevailed," says St. Luke.[3] Matthew says "tumult was arising."[4]

Rosadi thinks that Pilate "set great importance, as he found it impossible to be just, upon being quite clear in what he had to say. But it was difficult for him to make his words heard. Moreover, many languages were spoken by the multitude. So true was this that Pilate himself ordered the superscription, later on affixed to the cross, to

1. "Tr. of Jes.," Vol. 2, p. 136.
2. Luke, 23; 22.
3. Luke, 23; 23.
4. Matt., 27; 24.

be drawn up in three languages, to the end that it might be read by the many. One can therefore well understand that he should have had recourse to a symbolical mode of expression in order to make himself understood by a vociferous crowd, the greater part of which was familiar with this outward sign."[5] Rosadi further observes, of the inefficacy of this act: "According to the convenient conception of the Governor, this abdication of duty, thus expressed, might apply to the initiative and exaction of the sacrifice of which the Jews were certainly guilty, but it cannot free him from the higher and ultimate responsiblity of injustice, which falls entirely upon him."[6]

"Then answered all the people, and said, His blood be on us, and on our children."[7]

How certainly, and how fatally this obligation of blood atonement was visited upon the people of Israel—not sparing their dignitaries—is recorded in the chronicles of the time. Josephus narrates the outcome of their insurrection against Florus in A. D. 65, when, in spite of the pleas of the Jewish leaders after the uprising had been overcome, to spare the lives of the intended victims, Florus set his soldiers upon them, at whose hands "the whole number of those that were destroyed that day, with their wives and children * * * was about three thousand and six hundred. And what made this calamity the heavier, was this new method of Roman barbarity: for Florus ventured then to do what no one had done before, that is, to have men of the equestrian order whipped and nailed to the cross before his tribunal, yet were

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5. "Tr. of Jes.," pp. 283, 284.
6. Id.
7. Matt., 27; 25.

they of Roman dignity notwithstanding."[8] And when Titus' siege of Jerusalem, in A. D. 70, was nearing its end, similar barbarities are told of by that historian: "So the soldiers, out of the wrath and hatred they bore the Jews, nailed those they caught, one after one way, and another after another, to the crosses, by way of jest, when their multitude was so great, that room was wanting for the crosses, and crosses wanting for the bodies."[9]

Matthew postpones the crowning of Jesus with thorns, making that act to occur after the release of Barabbas, and of the scourging:

"Then released he Barabbas unto them: and when he had scourged Jesus, he delivered him to be crucified. Then the soldiers of the Governor took Jesus into the common hall, and gathered unto him the whole band of soldiers. And they stripped him and put on him a scarlet robe. And when they had platted a crown of thorns, they put it upon his head, and a reed in his right hand: And they bowed the knee before him, and mocked him, saying, Hail, King of the Jews! And they spit upon him, and took the reed, and smote him on the head. And after they had mocked him they took the robe off from him, and put his own raiment on him, and led him away to crucify him." (Matt. 27; 26-31).

St. John records a last expedient of Pilate, in lieu of resolute judicial action, to rescue the Nazarene from the enemies hungering for His blood. This followed immediately after His scourging—a resort to which course as a punishment to mollify the Jews had proven, in his hands, vain.

Crowned with thorns and wearing a purple cloak, and bearing marks of the cruel flagellation that had

8. Josephus, "Wars," 2, 14, 9.
9. Id., 11, 1.

been inflicted upon Him, Jesus was shown to the crowd from the tribune, in an endeavor to excite pity. "Pilate stooped over the rail of the bema, and stretching his arm towards the innocent prisoner, cried, as if in sarcastic epilogue to the events of the morning:"[10]

"Behold the man!"[11]

This appeal to the pity and sympathy of the turbulent assembly for the scourged and reviled Jesus but excited anew and more intensely the hatred of the priests, who demanded again and again His crucifixion.

Rosadi, in discussing the probable meaning of the Jews when they replied to Pilate's declaration at the suggestion of crucifixion, ending by "for I find no fault in him," gives this version of the Jews' reply "We have a law, and by that law he ought to die, because he made himself the Son of God": In other words, he reasons, they said in effect: If unable to judge Him legally, we will put Him to death as our law demands. He declares that this alone can have been their meaning, as "they could not have claimed that a Governor should apply the Mosaic law, because the foreigner who in a Roman province rendered himself guilty of a capital offense was bound to be tried according to the laws of Rome."[12] But, as we have seen, other views favor the idea of Roman application of Jewish law in such instances. Rosadi, however, cites the Twelve Tables in support of his position, and this was probably the usual interpretation of Roman law as regards procedure as applied to the provinces.

But if we interpret Pilate in the above connection

10. Chand., "Tr. of Jes."
11. John, 19; 5.
12. "Tr. of Jes.," p. 285.

as meaning, that under neither Roman nor Jewish law did he find Christ guilty, but that, regardless of law, he submitted to the Jews as an alternative to His release, His crucifixion,—thus seeking to fix upon Hebrew authority the odium of His execution, the response of the Hebrews may well be regarded as intended to impress upon Pilate his misconception of the Jewish law and to admonish him that, even though he was a Roman administrator, he could find warrant for conviction of Jesus by applying Hebrew law. Or, on the other hand, they may have brought forward the Hebrew law in connection with this new charge (blasphemy), and have submitted it to Pilate for his adjudication, on the theory that he had not yet attempted to consider other than Roman law, but was bound to administer Hebrew law,—and thus to impose upon *him* that odium with the official responsibility attending it. This theory harmonizes with the legal postulate of Roman appellate or revisory jurisdiction under Jewish law; which idea, however, Rosadi opposes.

On no theory could or did the Procurator escape responsibility then and there, or at the hands of posterity. His injunction at the crisis of his weakness, "See ye to it,"[13] was all in vain. He ordered the scourging. His authority alone it was at whose behest was imposed the crown of thorns. Rome only could summon execution upon the cross. The superscription placed upon it was the ingenuity of a Roman Governor, exercised to emphasze Roman law and authority and to sink deep the shaft of ridicule in the heart of Jewish pride and hypocrisy. Roman soldiers headed and gave legal significance to the procession that took the condemned One to the place of execution, and on Calvary these executioners re-

13. Matt., 27; 24.

flected only Roman means of taking life for adjudged crime. And so, in point of law, Rome did the deed.

It is worth while to follow Rosadi in his observations upon the variant applications given by the Evangelists to the scourging process, and in his version of the law and facts:

"By the two first synoptics the flagellation is put down as belonging to this final stage of the trial and as a preliminary to the crucifixion. (Matt. 27; 26. Mark 15; 15). By the third Evangelist it is put farther back as a punishment twice proposed by the Governor and never carried out, as a substitute for crucifixion. (Luke 22; 16, 22). The fourth Evangelist makes it an offer of the Governor afterwards carried out, but as a substitute for and not as a preliminary to crucifixion. (John 19; 1). The divergency is thus remarkable but not irreconcilable. St. Matthew and St. Mark simply assert that Pilate delivered Jesus up to be crucified after causing Him to be scourged, as was the custom before crucifixion. St. John anticipates the flagellation somewhat, giving us to understand that Pilate intended it first as a substitute for the cross, and that afterwards, when the Jews insisted, he converted it into a preparatory measure. St. Luke merely restricts himself to the reiterated proposal of flagellation as a punishment complete in itself. (Luke 23; 16). What is quite certain is that the flagellation corresponded to the *virgis cedere,* (submission to the rod) which according to Roman law preceded the *securi percutere* (dispatching with the axe) in the generality of executions."[14]

Aside from the strictly legal phase of the scourging, however, the suffering and humiliation of Jesus incidental to that infliction and to the mockeries in-

14. "Tr. of Jes.," p. 287.

dulged in, were doubtless regarded by the Procurator as calculated to appeal to the pity and mercy of the would-be destroyers of the Accused. Hovey, while doubting his being moved by humane feelings, observes: "He had probably witnessed the scourging, and had not interposed to prevent the mockery and insult that followed. Yet, it is possible that he permitted the latter, as well as ordered the former, with a view to satisfying the vengeance of the Jews, and thus escaping further importunity to condemn the Prisoner, whom he felt to be innocent."[15]

We here reiterate our belief that Roman soldiers first appear in this tragedy, at the flagellation. That they had not been connected with the arrest.

Bearing in mind Rosadi's attitude of denial of Hebrew competency to try Jesus, let us quote briefly from his summary of His trial:

"Jesus was now condemned. That He was tried cannot be said, for who were His judges and when did they judge Him? Not they of the Sanhedrin, for they had not the power, nor did they claim it. Not by the Roman magistrate in the Pretorium, who heard not a single word of evidence, sought not a single proof, weighed not a single pleading, observed not a single form." And as if to show the greater marvel in this miscarriage, he goes on: "But at the time when these things took place, the law-giving genius of Rome had reached, in the organization of its criminal tribunals, the highest pinnacle of civilization. It is sufficient to have a summary notion of what Roman criminal trials were, in order to strike a comparison between what actually took place and what the trial before the Roman Governor on April 7 should have been." That author goes on to develop the growth of Roman procedure through the cen-

15. Commentary on St. John, p. 371.

turies, when, from the law of appeals, judges, from being such, became prosecutors, the people taking their place as judge. We have seen what these stages of growth were, and how imperial power came to take jurisdiction out of the hands of the Comitia under Augustus; twelve specified kinds of crime being relegated for trial to the "permanent tribunals," the jurisdiction in all other cases going to the Senate. Adds Rosadi: "Lucius Pontius Pilate was, therefore, within the limits of his office, provided with the same judicial power as the senate, not only for this reason, but also on account of the historical and civilized source from which his power derived; it is evident that this could not have been construed to override the rules assuming to a capital trial the dignity and safeguards proper to the most supreme function of a decadent, but nevertheless civilized, people."[16]

16. "Tr. of Jes.," p. 288.

CHAPTER XXXV

Procession to the Crucifixion—Through Gate of Ephraim—"Daughters of Jerusalem"—Via Dolorosa—Crucifixion Exhibits Roman Authority—Location of Calvary, in Doubt—The Cross, Unknown to Hebrews, Origin of—The Superscription.

FROM the Pretorium about mid-day went forth the procession to the Crucifixion. Following were "Hebrew priests, citizens from every class in the holy city, strangers from distant regions, Levites and scribes from the Temple, guards of the Sanhedrin, Roman soldiers under command of a centurion, and women of various ages and various demeanor," says Rosadi.[1]

They passed out by the gate of Ephraim "in the direction of a neighboring altitude, bare of trees and in the form of a skull."[2]

The weakest of these prisoners, Jesus, gave way under the burden of the cross He was bearing, soon after starting. The wayfarer from Cyrene, coming in from the country, was requisitioned by the soldiers to carry the cross.[3] This Simon was probably from Libya; and some record has it that he was the father of Rufus and Alexander, and that he himself, his wife and sons were disciples of Jesus.[4]

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1. "Tr. of Jes.," p. 299.
2. Id.
3. Matt., 27; 32. Mark, 15; 21. Luke, 23; 26.
4. Rosadi, "Tr. of Jes.," p. 300, and note 3, p. 315. Mark, 15; 21.

Beating their breasts and giving vent to piercing sobs were Mary Magdalene, Mary, Salome (mother of St. John), Joanna, wife of Chuza, and others of the early disciples and followers of the Nazarene; and tradition adds Veronica, who took pity upon Him as he passed her house, "His brow covered with dust and blood," and bathed His face with her veil; thus heroically tendering ministrations in the hour of peril.[5]

"Daughters of Jerusalem, weep not for me, but weep for yourselves, and for your children. For, behold, the days are coming, in which they shall say, Blessed are the barren, and the wombs that never bare, and the paps that never suck. Then shall they begin to say to the mountains, Fall on us; and to the hills, Cover us. For if they do these things in a green tree, what shall be done in a dry?" (Luke 23; 28-31).

Here was predicted the vengeance of God soon to be visited in judgment upon the iniquities of the rulers of the City of David. Here was given in subtle and beautiful phrase the simile of fires of the wrath which was blasting the virile green tree in the guileless Jesus, and of the more fatal blaze of Jehovah's decree which was to lay hold of and consume the dry trunk of the Hebrew spirituality in the siege and overthrow of Jerusalem—which indeed fulfilled His prediction in the unspeakable woes of those daughters and their loved ones.

Says Rosadi: "The road which led to Calvary was practically the same which goes to-day by the name of *Via Dolorosa*. This road runs through the whole of the lower city of Acra, crosses the Low Street, which Josephus calls the Valley of the Tyropean, and which separates Acra from Gareb, and

5. Rosadi, "Tr. of Jes.," p. 301.

mounts by a fairly rapid slope to the gate of Ephraim."[6] The word "Calvary" was so-called in the Latin (calvaria) from its resemblance to a skull.[7] In the Syro-Chaldaic dialect it was called Golgotha —from the Hebrew Gulgoleth.[8]

The precise location of Calvary, however, is the subject of so much speculation and real uncertainty, that only a surmise can safely be indulged in upon that head; as is also true in great part as to the route pursued on the way to Calvary from Pilate's Pretorium. If, as is believed to be substantiated by the preponderance of historical evidence and authority, the Pretorium was on Zion Hill, then the route to Calvary probably extended thence northeasterly to near the southwest corner of the Temple Court or Area, thence north to near the northwest corner of that Area, thence along what is understood to be recognized as at least part of the Via Dolorosa, in a general direction somewhat north of due west to the Gate of Ephraim. This gate was at substantially the northwest corner or angle of the first or inner wall built around the northern hill called Akra.

But other authorities[9] who seem to have convinced many readers, and visitors to the Holy City, hold that the Pretorium stood just north of the northwest corner of the Temple area—close to the Fortress or Tower of Antonia; from which point, in that case, would begin the route in question, running thence

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6. Id., p. 314, note 2.

7. Matt., 27; 33. Mark, 15; 22. John, 19; 17. Rosadi, "Tr. of Jes.," p. 315, note 9.

8. Broadus, Commentary on Matthew, p. 568: "meaning to roll, indicating the globular form of a skull. This in Aramaic would be gulgoltha, which is found in the Syriac of Jerusalem." Id.

9. See, Chapter 22, and the authorities there collected.

westward on substantially the course first above indicated. Rosadi—who as we have seen refers to the Ephraim Gate as the point of exit of the procession, believes that the crucifixion took place "within twenty steps of the city wall, which at this point formed a re-entrient angle, and within this triangular area the execution must have been carried out."[10] Again: The "Church of the Holy Sepulchre," erected upon what the authorities who acted for Helena, mother of Constantine, regarded as the locus in quo, is now considered by many investigators and students as being situated too far within the city, eastward, to mark the true location. Broadus is seemingly correct in declaring that that Church "is far within any probable position of the city wall at the time of the crucifixion."[11]

If the execution in fact occurred "within twenty steps" or thereabouts of and outside the wall in which the Ephraim Gate stood, it would also be a considerable distance south of the point at which is located another alleged site of Calvary, beneath which small rounded hill is the Grotto of Jerusalem —a place nearly due north of the city. This latter hill seems to be regarded by many recent investigators,[12] including General (Chinese) Gordon, as the place of the crucifixion. And some evidence tends to establish that the route taken was eastward from the vicinity of the Tower of Antonia to the St. Stephens Gate, thence northerly along the western

10. "Tr. of Jes.," p. 316, note 9. "Close by passed the road to Samaria through the midst of olive plantations, among which the rich families had their tombs excavated." Id. St. John records (19; 20): "for the place where Jesus was crucified was nigh to the city."

11. Broadus, Commentary on Matthew, p. 568.

12. Id., p. 569.

side of the Valley of Jehosophat (or Kedron Valley) on the main road, thence westerly to the destination last designated.

Nothing so conclusively proves the terrible vicissitudes and war-scars of Jerusalem in the present era, as this all but humiliating fact that the official residence of Pilate during that immortal Passover, and the place of the crucifixion are yet—perhaps for all time—buried in obscurity which baffles investigation.

The cross, unknown to Hebrew law or tradition, was in common use among other ancient peoples, including Romans. "These last, in Syria especially, employed it upon a vast and inhuman scale," observes Rosadi.[13]

Deriving its punishments from private revenge "as the ground and measure of retribution," the Roman law "laid the foundation of our actual theory of punishment in the two connected principles of amendment and intimidation."[14] But the weightier element in that system was necessarily intimidation. "That nobody shall venture to commit a similar act with these examples before his eyes "[15] says the Roman law in the Novels.

It is said that the cross derived its origin from the ancient practice of fastening criminals to a tree, which was termed "accursed" (arbor infelix), "so that the term 'cross' was applied to every form of capital punishment, and every malefactor worthy of death was called *cruciarius*."[16]

It is the belief of Rosadi, that of the three forms of crosses in use in ancient times, the form by which one beam was mortised into another was that used in the

13. "Tr. of Jes.," pp. 301, 302.
14. Id.
15. Nov., 8, 8.
16. Rosadi, "Tr. of Jes.," p. 303.

case of Jesus.[17] No information whatever on this head is furnished by the Evangelists. Early church fathers urgently insist that the hands and feet of Jesus were nailed to the cross; while later orthodox writers, taking the same view and opposing heterodox authorities who declare that such was not the case, seem to base their differences on the presence or absence of a Messianic prophesy.[18]

The placarding of the cross with the superscription in three languages was, as regards its contents, according to a Roman custom, requiring the condemned person to carry it; the purpose being to make known the ground or reason of the condemnation. It is generally believed that in this instance it was written in Latin, Greek, and Hebrew. "Hebrew was the national idiom; Greek was the universal tongue, spoken all over the civilized world; Latin was the official language of the judicial and executive power, and was in this case employed expressly by reason of the official character of the event, and not in order to give the inscription wider publicity. Nobody outside of the suite of the Roman Governor can have been acquainted with Latin." And adds Rosadi:[19] "It embodied a final stroke of sarcasm against the detested Jews."

And to the Jews' request that he write not "The King of the Jews; but that he said, I am King of the Jews", the Procurator retorted: "What I have written, I have written."[20]

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17. Id., pp. 303, 304.
18. Id., p. 305.
19. Id., pp. 306, 307.
20. John, 19; 21, 22.

CHAPTER XXXVI

Pilate Discarded all Suggestions of Jesus' Guilt—Jews Dominated Over Rome's Processes—Moral Responsibility for Crucifixion was Upon Sanhedrists—Blasphemy, Rather Than Sedition, Pilate's Mental Basis of Condemnation—"King of the Jews" a Derisive Figure-Head on the Record of the Trial—The Aromatic Beverage Offered Jesus, a Jewish Custom—Division of the Garments, Roman Law—Christ's Love Triumphed Over Enemies' Hatred and Taunts—"Veil of the Temple was Rent," Darkness and Silence—Christ's Agony the Burden of His Emancipation of Sinning Man—"Why Hast Thou Forsaken Me?" Biblical Prophesies Foretold This Extremity—Hour of Jesus' Death.

PILATE, as Rome's regent, had delivered the Prisoner up for execution. He had not adjudged Him guilty of any crime, nor sentenced Him for crime committed, he had persistently refused to find Him guilty. He had turned back upon the Jews every suggestion of guilt, whether based upon the implication of blasphemy or the virtual charge of treason. He had, theoretically, spurned the idea of crucifixion for supposed pretension to kingship over Judea, when he not merely inquired but exclaimed "Shall I crucify your King?"[1]

But the Roman power had in fact delivered up Christ to His sworn and bloodthirsty enemies—those in power in Israel. While this was done under the

1. John, 19; 15.

semblance of Roman authority, the spectacle, to those there assembled and to all the world since that day, was one of Sanhedrist dominance over the very process of Rome. For in impelling Jesus to the fate of Calvary they made that process *their* instrument. They trampled Pilate's moral protest under foot, and exalted Judea up to the throne of virtual imperial power. They gained the two-fold victory of vengeance unto death to Jesus and of abject surrender of Roman juridical procedure to the behest of the Temple Oligarchy!

But they took the moral responsibility of the double usurpation of right, to themselves, before God and man, for all time.

What mental objective had Pilate when he wrote "King of the Jews"[2] upon the cross? Aside from its laconic aspect, what did it mean, as regards crime?

Upon its face it meant sedition. He knew that this fact would be recognized by the Jews, and assumed that all Rome would so regard it. Such a construction of his *act* in default of his *judgment* would save him from implication of condonation of treason, were he called to account before his Emperor.

But was this the actual mental judgment of Pilate, as the real ground upon which condemnation might rest, if justified at all?

No. It was, we believe, rather the charge of blasphemy, based upon Hebrew theocracy, which was the theoretical sanction of condemnation in his mind.

Rosadi's conclusion is, that sedition was not only the crime suggested by the superscription, but that for no other could Roman authority convict Jesus. While issue has been adventured with him on that point, his strong reasoning is luminous in dealing

2. Matt., 27; 37.

with motives involved. After declaring that the circumstances surrounding the carrying out of sentence of crucifixion prove that the proceedings constituted "a judicial action exclusively of Roman authority," he proceeds: "If a sentence had been passed by the Jews in the Sanhedrin, instead of a mere accusation, it would have had blasphemy, not sedition, as its ground. The charge of sedition was debated but finally rejected by the Sanhedrin, which unanimously and exclusively reverted to the first charge, declaring Jesus worthy of death solely because He had blasphemed in proclaiming Himself not the King of the Jews—but the Son of God. In this superscription, for all its irony and scorn, there is obviously contained the declaration of a crime of sedition." He immediately adds: "This declaration was not made by Pilate, but he made no other. Yet he delivered Jesus up to be crucified. He must, therefore, have mentally and definitely supposed some offense as a foundation, however unjust, for his delivery of Jesus. This offense is precisely that which he himself had fixed, in his laconic style, at the head of the cross. If, instead of giving play to irony up to the very last, he had thought out the motives of the delivery, which was equivalent to a sentence, he would have pronounced a condemnation for sedition or lése majesté. This was the only possible description which, according to the Roman law, could be applied to the crime of which Jesus was vociferously accused, but which Pilate would not believe. Although beyond the confines of the Empire, it was Roman law which Pilate was bound to administer, and necessarily did administer."[3]

This conclusion of Rosadi,—that Pilate's intention was to virtually order or confirm sentence upon Jesus

3. "Tr. of Jes.," pp. 307, 308.

for claiming to be "King of the Jews", rather than for blasphemy, seems not to be justified by the Gospel narratives. We agree that such would probably have been the judgment of the Sanhedrists had they proceeded to formal condemnation. We recognize that the scourging and all proceedings in connection with the crucifixion were "exclusively of Roman authority."

But it seems clear that Pilate's references to kingship in Jesus in what transpired between him and the Jews, including the crowning with thorns and the incidental derisions and abuses, as well as in framing the superscription, were not intended to record his own mental conclusion as to the precise charge to which the crucifixion should be referred, but was rather to emphasize his own derision of the Jews for seriously pretending that Christ aimed at headship of, or overthrow of the state, or sought political power at all; to evidence his recognition of their consuming envy of the Nazarene; and his belief in the hollowness of their pretence to loyalty to Caesar when he asked "Shall I crucify your King?" The whole narrative exhibits Pilate's contempt, irony, and derision at the suggestion of the accusers that Christ was aiming at kingship. That he early in the proceedings rejected as utterly baseless the accusation of sedition, in connection with which the claim of pretension to kingship was, though informally, set up, seems clear also from his repeated declarations of Jesus' innocence.

On the other hand: when the Jews, eager to accept Pilate's proposal that they crucify Jesus, declared that He ought to die pursuant to Hebrew law for making Himself "the Son of God,"[4] the Procurator looked seriously into this charge. He pressed

4. John, 19; 7.

Jesus to the point of disclaiming earthly and declaring for a higher sovereignty, and for that kingdom of "truth"[5] which, while mystifying Pilate, still left him convinced that no crime had been committed. Rosadi himself, as seen,[6] construes this proposal of the Jews to mean that they were resolved to execute Jesus—although unable to judge Him legally,—to "put him to death as our law demands," since (he reasons) neither Pilate nor the Jews could claim that the former could "apply the Mosaic tests."

Now, while other and higher authorities sustain Roman administration of Hebrew law through a procurator, still Pilate, recognizing in this charge of claiming sonship of God a theistic accusation referable to Hebrew jurisprudence, would readily and upon good legal and political grounds acquiesce, mentally, in the idea of deference to the Hebrew authorities where religion was involved—thus exemplifying the policy of the Roman Provincial administration; and would therefore incline to regard the case which, if any, was before him, as one of a Sanhedrist judgment upon a charge of religious character, and to ascribe to the Jews greater sincerity in bringing such a case before him for review—or re-trial—than if sedition (kingship) were urged. It is conceived, in view of all the circumstances here discussed, that Pilate mentally resolved that, while he acquitted Jesus of both charges, the behest of the Jews for His life should prevail upon the basis of the theocratic charge of blasphemy. There was, as we have seen, a strong and personal ground for putting forward as a figure-head *in the record* the charge of sedition under the phase of kingship—Pilate's fear of Caesar's displeasure—a displeasure that might prove

5. John, 18; 36, 37.
6. "Tr. of Jes.," p. 285.

a two-edged sword, susceptible of cutting off the Procurator's political head, or worse, for maladministration alleged by a possible Jewish embassy to Rome, or of compassing the same end for the very act of ordering, or juridically permitting, the crucifixion. Hence the spectacular phase of sedition and kingship was conveniently in the annals of the case, while Roman deference to Hebrew condemnation for blasphemy as related to Mosaic theism, and the crucifixion in the light thereof, could be forcefully plead by Pilate, if arraigned for judicial oppression in taking life for alleged blasphemy.

The offering to Jesus on the cross of the aromatic beverage, was pursuant to a Jewish custom in order to alleviate suffering and benumb intelligence.[7] And whether it was "wine mixed with myrrh"[8] or "vinegar and gall,"[9] the Roman executioners had nothing to do with the proffer of it. It may have been the pious women who were weeping near the cross who thus solicited to comfort the dying Jesus. But Rosadi thinks it may be inferred from the Evangelists' account "that this beverage was nothing but the drink which the soldiers had with them. If this was the case," he adds, "all that the women did was to beg leave of the Roman guard to moisten the lips of Jesus."[10]

Regarding the division of Jesus' garments between the Roman soldiers; that right existed under the Roman law. Rosadi says on this head: "The spoils of prisoners condemned to death (pannicularia) belonged always to the executioners, in virtue of a right sanctioned by an explicit provision of the

7. Rosadi, "Tr. of Jes.," p. 308.
8. Mark, 15; 23.
9. Matt., 27; 34. Mark, 15; 23.
10. Rosadi, "Tr. of Jes.," p. 309.

Roman law. In the particular case of Jesus, the clothes were probably the *taleth,* a cloak, a shirt, a girdle, and shoes. The men entrusted with the carrying out of the sentence were four in number. After dividing the garments into a corresponding number of parts, they cast lots for the possession of them. Having done this, they took up their places close to the three crosses in order to keep watch."[11]

The Evangelists' accounts agree on this head: Matthew says (27; 35) they "parted his garments, casting lots;" Mark (15; 24) "they parted his garments, casting lots upon them, what every man should take;" Luke (23; 34) "they parted his raiment, and cast lots;" and John (19; 23-25), that they "took his garments, and made four parts, to every soldier a part; and also his coat: now the coat was without seam, woven from the top throughout. They said therefore among themselves, Let us not rend it, but cast lots for it, whose it shall be: that the Scripture might be fulfilled, which saith, They parted my raiment among them, and for my vesture they did cast lots. These things, therefore, the soldiers did."

In the last agony of the Saviour those savage persecutors stood there before the cross, glaring in exultant pride of power at His helpless bleeding body, and in revenge and derision they taunted Him:

"He saved others; himself he cannot save."[12]

And the Roman soldiers: "If thou be the King of the Jews, save thyself."[13]

But love triumphed over even the mildness of reproach, in the heart which now, in the moment of most cowardly revilement by His persecutors, re-

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11. Id.
12. Matt., 27; 42. Mark, 15; 31.
13. Luke, 23; 37.

flected only the attributes of charity that were to spiritually illumine the risen Messiah.

"Father, forgive them; for they know not what they do."[14]

"Woman, behold thy son! Then saith he to the disciple, Behold, thy mother! And from that hour the disciple took her unto his home."[15]

To the moment of His dissolution He preaches His doctrine and pursues His ministry:

The skeptic malefactor replied: "Art not thou the Christ? save thyself and us."[16] The believing one rebuked his fellow in misery, and in repentant faith turning to Christ, said: "but this man had done nothing amiss. * * Jesus, remember me when thou comest in thy kingdom. And he said unto him, Verily I say unto thee, To-day shalt thou be with me in Paradise."[17]

And there must have been an agony of humiliation in the hearts of those hardened Sanhedrists, deeper in their consciousness than the pride, arrogance and exultation that found expression only in words. For there, crowning and characterising the whole spectacle was that legend: "THIS IS THE KING OF THE JEWS."[18]

Then came the end—until the Resurrection:

"It is finished."[19]

"Father, into thy hands I commend my spirit: and having said this, he gave up the ghost."[20]

And His end on the cross came, according to the

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14. Id., 34.
15. John, 19; 26, 27.
16. Luke, 23; 39.
17. Id., 41-43.
18. Id., 38.
19. John, 19; 30.
20. Luke, 23; 46.

three first Evangelists, at the close of the three hours of darkness.[21]

"And when the sixth hour had come, there was darkness over the whole land until the ninth hour." Then came His cry: "My God, my God, why hast thou forsaken me."[22] And as He expired "the veil of the temple was rent in twain from the top to the bottom."[23]

This period of darkness is regarded as a supernatural visitation and as not explainable as the result of the great earthquake recorded by Matthew, by which "the rocks were rent; and the tombs were opened;"[24] etc. And while it seems physically possible that an earthquake which rent asunder the rocks in which tombs had been cut, might, through the exudation of semi-impalpable dust that would arise from the debris of such a physical shock, cause the sun to become at least partially obscured for a time; yet there seems not to be extant any evidence indicating that such a disturbance was believed at the time to have been the cause of the darkness. The cause cannot be attributed to the sun's eclipse, since such a phenomenon could not have occurred at that time in view of the fact that the moon was at the full.[25]

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21. Matt., 27; 45. Mark, 15; 33. Luke, 23; 44.

22. Matt., 27; 46.

23. Id., 51.

24. Id., 51, 52.

25. Breadus, in his Commentary on the Gospel of Matthew, thus explains: "It cannot have been an eclipse of the sun, because the Passover was at the middle of the month, and the month always begins with the new moon, so that the moon was now full, i. e. on the opposite side of the earth from the sun." P. 573.

The Revised Version (Luke 23; 44, 45) runs thus: "and a darkness came over the whole land, until the ninth hour, the sun's light failing." Dr. Bliss ("Commentary on the

Dr. Clarke remarks: "Of what was said and done during the time of the darkness nothing is told. The natural impression is that with the darkness there fell a silence upon the place. It seems quite certain that during these hours Jesus suffered in silence, and almost equally certain that now his tormenters were still and the noise of the crowd was hushed."[26]

And regarding the unfathomable depth of His spirit as He uttered the words concerning His being forsaken, reflection carries the human consciousness into contemplation of the Saviour as at once uniting God and man in Himself, while He suffers unspeakable agony of spirit as the burden of His emancipation of sinning Mankind. Clarke reasons thus: "There was then in His soul a suffering on account of sin sorer than any that ever was or can be endured by any other of woman born. * * * in this final agony our Saviour's sense of His unity with God was overpowered by His sense of His unity with sinful men. These two unities were the Godward and manward aspects of His essential being. * * * The sense of His unity with men overpowered His sense of His unity with God and brought the whole burden of the world's sin upon His consciousness."[27]

The reference to the rending of the veil of the Temple, is explained as a sign from God to the Hebrew Priests, symbolizing the removal of all ob-

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Gospel of Luke," p. 340) says: "The terms used are those appropriate in Greek to signify an eclipse, but might be used to mark an effect like that of an eclipse, without asserting that the moon then shut out the light." Dr. Clarke (Commentary on the Gospel of Mark, p. 242) states that earthquakes "are often accompanied by an unwonted gloom. This, however, is only a hint provided us, not an explanation."

26. "Commentary on the Gospel of Mark" (edited by Dr. Hovey), p. 242.

27. Id., p. 243.

stacles to free entrance into the sanctuary and the abolition of approach thereto "by priestly and sacrificial service"—that this rending proclaimed that the space within the sanctuary "was now common ground."[28]

In this deep philosophy is seen a vital phase of the whole revelation involved in Jesus' crucifixion as a spiritual redemption of mankind. Priesthood then and there received a rebuke, in the sense of denying its essentiality in revealing the Deity to His children.

The appeal of Jesus in His last extremity on Calvary, to God as having forsaken Him, is brought into comparison with the prophetic words of Holy Writ, by Rosadi:[29] "He had drunk the cup of bitterness to the dregs, and in the calm utterance of His anguish He might repeat the words of the Psalm foreshadowing the tragedy. Unless indeed in their relation of His dying words the Evangelists remembered David rather than Jesus, He repeated the lines of the Psalmist almost word for word: 'My God, my God, look upon me; why hast thou forsaken me; and art so far from my health, and from the words of my complaint?'" "I am * * * a very scorn of men, and the outcast of the people." "All they that see me laugh me to scorn; they shoot out their lips, and shake their heads." (Ps. 22; 1, 6, 7, 14-19). "They pierced my hands and my feet; I may tell all my bones; they stand staring and looking upon me." "They part my garments among them, and cast lots upon my vesture." (Id.)

Three hours or thereabouts, after mid-day of April 7 saw the end of the Saviour as the expiring Redeemer. Upon this head Rosadi remarks: "The divergence between the passages of the Gospel with

28. Id., p. 246.
29. "Tr. of Jes.," p. 311.

regard to the hour of death of Jesus is evident and irreconcilable. The most acceptable hypothesis seems to be that of the ninth hour of the Hebrews, which answers to our 3 P. M."[30]

30. Id., p. 322, note 70.

CHAPTER XXXVII

Speculations on Result of Hypothetical Acquittal and Release of Jesus by Pilate—Jesus' Persecution Unto Death Inevitable—Hidden Truths Involved Reveal Divine Righteousness in Jesus' Persecution—His Continued Reign Must Have Overthrown, Politically, His Oppressors—Chirst's Political Dominance Would Have Meant His Summary Death—Jesus Foreordained to Fatal Persecution—Persecution Inevitable in Spiritual Progress—Tragedy of the Cross, Righteous in Divine Conception—The Trial Thus Seen Reveals Record Divinely Just—Shows Man Arraigned Before Court of Heaven.

REFLECTION upon what might have been the effect upon His life and ministry, of Jesus' acquittal and release by Pilate, while entirely academic in connection with discussion as to the legal effect of His so-called trials, may yet be admissible in considering the essential underlying truths of His appearance on earth and His inevitable destiny as the victim of persecution.

There is of course obvious presumption in the assumption of facts upon which indulgence in such reflection may rest.

Christ, as the Evangelists have made plain, had felt that His end by violent means was imminent—that His hour had come; and He had so expressed Himself on the eve of His apprehension by His enemies. The Crucifixion was to be!

Had His life been spared as the result of those

Passover scenes called trials, and had Pilate protected Him from mob violence, and fate from the assassin's thrust, so that His demise would come in the natural way, still we can not conceive of His career following such supposed acquittal, as being exempt from dire persecution amounting, under the Divine Plan, to virtual crucifixion. His life and all the precious precepts thereof had indeed been the very causes of the persecutions culminating in the impending judicial murder. His subsequent course must in any event have been but a continuance of the record so made by Him. What He had declared before the Sanhedrin and to Pilate concerning His Messiahship would not—even if acquittal had followed—have opened the eyes of those bigoted and sinful Hebrews to the real fact,—that His kingdom interfered not with their political relations to the Judean state, whether regarded as controlled by Jews or by Romans.

On the contrary, it seems certain that Christ's declarations of future coming in power would have confirmed their misguided conceptions into intenser hatred. His declaration to Pilate in private touching a kingdom "not of this world" would, indeed, have become known to the Sanhedrists only through Roman mouths deeply suspicioned by the persecutors, or through reiteration by some of His apostles whose standing was now discredited by them. But in whatever manner conveyed or sought to be impressed, those declarations would but have added fuel to the flame of undying pursuit to the end of His final condemnation. It would not be irrational to presume also, that further insistence upon Jesus' undoing would have followed His release by the Procurator, in the direction of an appeal to the Roman Emperor against the record of Pilate—foreshadowed by Sanhedrist threats before him.

But the assumption that Jesus' propaganda, properly understood, would not interfere with the reign of the Sanhedrists, is not tenable. We confess to having put it forward as a postulate for an immediate conclusion which would finally have to be set aside. Christ's continued reign upon earth must have overthrown His oppressors, politically, if tolerated for any considerable period after the events of the Passover. The Hebrew regime, so mastered as was this by perverted souls, could not withstand the alchemy of His daily works, and His increasing following in consequence. All history teaches that such a leader, acquitted by the dominant political power of all charges which His whole ministry thus far had evolved through calumny, fear and revenge, must soon have had a following whose force would result in His promotion to headship of the masses in Judea; and Jerusalem herself could not have stemmed the tide. But who can picture in imagination such a spiritual ruler over Judea in power so strong as to envelope the Holy City—acclaimed as Messiah—and *not* see as the inevitable sequel, such Messiah proclaimed by His followers a political ruler?

Such a climax in political power would doubtless have been mentally rejected, and strenuously cried down by the Master Himself. The conclusion seems inevitable that it would have been promptly reversed by the strong hand of Rome, which would now have been frantically reinforced by those Hebrew and Idumean hierarchs seeking with deadlier hatred to become reinstated upon the throne of local power, and by the thousands who had been profiting by their supremacy in religio-political life. The mind's eye fails to perceive room enough for even the formalities of a crucifixion here! Nothing but the miracle of a Procurator—a successor to Pilate—who could

see, and, seeing, act bravely upon his belief in the saving power of such a Captain so proclaimed, could have saved the day against ignominious defeat and summary death to the Son of Man in such premises. But such a miracle is so remote from probability as to form a hypothesis which all but crumbles down in process of its erection.

But, even were it supposed that His installation in hierarchal power over Israel had been successful in the sense of Roman non-intervention to overthrow a Christian ministry at the head of the state in Judea, and that no army, Jewish or Roman, had assailed Him, still the hand of the secret destroyer in some form of the assassin's quest haunts the fancy, when we contemplate the fashions of the East and the seething forces of destruction which would inevitably have hovered over the earthly reign of the Nazarene.

No: Jesus was foreordained to persecution even unto death, by the same forces whose malignant activities have in fact made the record of His affliction as it stands. Persecution was essential to the Plan, and therefore inevitable. Only through persecution could and did He become the aggressor in that strange and divine career in which He was only in seeming on the defensive. His love for man degraded in sin could be made manifest only through the supreme agonies and death that naught but that degradation could impose. That penalty, when once it became known in the sense of believing in the utter innocence of the victim and of His real spiritual Messiahship, could alone save the sin of Worldliness so condemned.

In a word, Christ lived the redemption, and died to prove its efficacy. So must He have died, whenever and howsoever His end on earth might occur. So only could right living and right loving, exemplified in Him alone, so entice the human heart as to

regenerate it and transform its life into eager searching for the truth for its sake and the glory of God.

And so this awful tragedy we have traced on the record of man's perverted legal procedure was, as we said at the outset, inevitable. If it was inevitable, it was righteous! Righteous in that divine conception through which alone can the value of the persecution in its resultant saving power to mankind through the ages be known. When there is seen in that transcendant operation we vainly call a trial—trials—mistrials—all one in ultimate import,—and in the Crucifixion as its sequel, a record divinely just to an end divinely gracious and preservative to mankind,—then will the vengeful Jew emerge as the divine instrumentality evolved by Providence in man's regeneration. Then will he be pardoned for his sin committed for a higher end he knew not of. And then will the whole drama of Jesus' life and death be seen as an unimpeachable record of a trial under the auspices of high heaven, with Sinning Man the culprit, Man's decrepit procedure the mask of Justice, Christ the Intercessor, God the Judge,—the verdict a lawful condemnation of Man the prisoner, his scourging in judgment, his final acquittal on review, through his confession of the truth in and through that Intercessor.

This it seems must be, too, the lawyer's view of this mysterious record in which light and darkness are so blended as to compel investigation into the bottom truths involved, and which when seen, however imperfectly, compel again to the inevitable conclusion—that the story and the reality of Jesus can not be known or measured on the side of justice, by the all too meager test of human laws, Jewish or Roman.

There is something in the whole spectacle—descried partly in the concrete records of the doings of

the Sanhedrists and the Procurator, partly in the softer atmosphere of the Judean life of the Saviour, —that draws the mind and compels the soul to realize that what occurred before those bodies—call them courts or call them mobs—is not the standard of justice in the premises—does not comprehend the case, does not digest it, does not satisfy the investigator, even when he sees and proclaims as his judgment and belief that there was naught but miscarriage of justice in those records, and in the crucifixion as their consequent. The issue itself is seen to be another and far more significant one than even that of guilt or innocence of Him whom those records deem the Accused. The truth thus revealed seems to reverse the whole movement, as well as the array of parties. God Almighty through Christ arraigns man, condemns, then graciously acquits!

CHAPTER XXXVIII

Lesson of Jesus' Life and Death—Worldly Ambition Must Die Through Well Doing to Others—Persecution Inevitable in Progress of Humanity—Righteousness of Persecution in This Sense—Wealth of Happiness in Well-doing—Good Inevitably Mixed with Evil—Love the Real Solvent—Jesus' Polity Necessary to Life of States—Jesus Still Unknown as He Would be Known—Communion With his Daily Life Necessary—Alchemy of Jesus' Dispensation But Dimly Comprehended—Its Highest Ministration Yet to Come—Divine Purpose of the Juridical Miscarriage, Impotence of Courts to Determine Divinity—The Real Trial Convicted Worldliness, Demanded Jesus' Sacrifice in Atonement — Jerusalem — Jesus' Personality Over All.

IF the concept sought to be expressed in the preceding chapter is sound, what, then, to humanity is the real efficacy of Jesus' life and death? What means the intelligence which brings home to the spiritual vision the perfect simplicity, innocence, and the ineffable teaching of the Lowly Heart amidst the sins and passions of man, exemplified in Him, and whose stirring of the soul to renewed vigor in righteousness was the purpose of that sweetly saintly career? And what the real intent of the eternal quest of the right and wrong of His trials?

The lesson, the process, the end of all discussion and contemplation herein is—man's worldly ambition must die, to the end that his spiritual growth,

aspiration and accomplishment may survive, and he be thereby lifted up in Faith, Hope and Charity. But more: This ambition, spurning worldliness as here conceived of, must indeed find its highest satisfaction and its supremist function in glorifying God by bringing glory to mankind. Spurning the world wherein is self-promotion as the end, to eagerly embrace the world wherein lies a vast, glad landscape for the work of the sower, the cultivator, and the reaper of harvests whose garnerings are the enlightenment and betterment of the erring and the benighted who stand in need of the effort! The laying up of "treasures in heaven," otherwise than in working out these ends, is but the phantasm of a perverted spiritual economy whose futility is as void of wisdom and of efficacy in salvation as is in this day the assembly of the creeds. Christ lived and died to exemplify, as the all in all of "saving grace," the simple ethics of doing for others that which, being done, itself glorifies God and thereby and therefore glorifies the doer, while aiding in the regeneration of those thus administered to. That ministration is the *summum bonum* of the glorification. So lived Jesus. So died and rose again The Christ. When man so acts he is saved—saved through the Saviour by virtue of imbibing of the essence of His spirituality which is the life of this doing.

But, still more: To so do and live means to be misunderstood, wronged, persecuted, in degree. There is no other means to the end. And this is seen when man contemplates the relations between the Christly doers and the oppressed and fallen whose estate demands this ministration. But the revealed truth that solves the mystery of Jesus' life and death is not discoverable until man peers into the inner consciousness of the drama, and sees so plainly that he realizes nothing so much as the precious essence

which made that life and its *denoument* so sweet and so useful to mankind,—namely, the very satisfaction of being misunderstood, wronged, persecuted!

For was ever any advance made in the progress of humanity towards higher levels without a "conflict glorious" involving misunderstandings, wrongs in the process, and persecution in some degree? How blind is man not to see that this is inevitable! How blinder still not to know that, being inevitable, it is righteous! If inevitable, if righteous, how erring in him not to feel that to experience these is the wealth of happiness in well-doing,—to teach which truth was the business that brought the Redeemer into this world and accounts for His works.

And this brings us back to the moral and spiritual elements which explain the relations between those who seek to do and those who are the object of solicitude, and which elements when understood by both parties thus related, are seen to prove the essential idea that made a Jesus necessary to mankind,—that all of good is mixed in some degree with evil, that there is indeed affinity between the two, that all strife involves some right, some wrong, on both sides,—that therefore that consideration for ungodliness which is the quality of Love is the real solvent which constrains to action, and works out godly results. In this economy, even the hating Judeans' part in the spectacle of which this study is in some sense an exposition, is seen to be of some virtue—is realized that charity which inspired Jesus to say of His persecutors, at the climax of His suffering and from the depth of His being: "They know not what they do."

That spirit of the master is in strange contrast with the strifes and schisms that arose and pursued their virulent and oftimes bloody course through the centuries and which, with equal strangeness, were the outcome of His life, trial and death. But the

leaven of His spirit and ethics is working among mankind to-day in what seems to be a re-awakening to the marvelous truth, that the deepest spiritual pleasure is in the simple life of promotion of the welfare of others, as being a vital principle of God's economy, exemplified in His Son; that the true policy of statecraft rests upon adherence to that principle, which is likewise primary in the erection of states and the preservation of rights, without which even self-government proves a failure; that only through its application can the public service be protected and redeemed from the greed and corruption of self-seeking officials; that the Christian churches can find their redemption from measurable failure as regents of Christ's economy and policy, only through some regeneration. That regeneration must be one which shall bring their propagation of the Gospel back to that simplicity and real efficiency which ignores appearances, knows not pride of distinction, mingles gladly with the sinning, and in charity helps the unfortunate, soothes the sorrowing, takes no thought of self save as an instrument to these ends and as a blessed beneficiary in the process.

For a verity the world has not known Jesus as He was, and as He would be known! He can never be so known until humanity, unfettered by the vicious phases of church commission or omission here adverted to, shall know Him regardless of His crucifixion and of the climaxes of His ethical and spiritual utterances—shall know and come into communion with Him as He journeyed among and ministered unto the commoners of Palestine, laboring for the needy of His day for their sake and that of the moral and spiritual virtues which He exemplified, with no thought of the morrow, with not where to lay His head, and suggesting in parable the vast significance providence of the sparrow's fall—shall

know Him because only of these priceless qualities whose summary defines Him, and because of the unspeakable blessedness of such a state of being and doing, regardless of future reward or punishment.

For rewards and punishments are set to redeem, or to thwart, the sinning. To know Christ as He would be known is to be without sin—He cannot be wholly known otherwise. Sinless man could no more desire reward, or fear punishment, than could the sinless Man-God Jesus.

We have entered this field of imputed all-knowledge in man of the attributes of Jesus—have thus suggested the millennium of spiritual insight of humanity into the Infinite, for a single purpose—that of attempting to illustrate, however feebly, the immensity of the truth that the alchemy of Christ Jesus' dispensation is as yet but dimly comprehended, or its saving virtues felt by suffering and struggling mankind; that the larger portion of its healing and elevating ministration is yet to be realized; and that investigation and contemplation of His life and trial are calculated to indelibly impress this truth.

What was the divine purpose of Jesus' condemnation and crucifixion, as a spectacle of juridical dispensation to Judea and to Rome, in its day and to futurity, as comprehended by the Almighty? Why the miscarriage? Why the lesson which was to become a lasting reproach to the courts of Palestine and of Rome?

It is conceived that the moral and spiritual truth involved, as related to dispensation of justice then and since, is: The devices of states to dispense justice were and are inadequate to register, or to conceive the right, where divinity is the issue. They failed and yet fail miserably, betimes. They approach justice, but measurably, ever.

Four centuries earlier Socrates, the "cross-exam-

ined god," whose Divine Monitor was his warning guide through life, and whose precepts that taught the practice of the primary virtues immortalized his genius, was condemned by the Disastery of Athens to drink the fatal hemlock—another instance of sacrifice of a religious missionary to the hatred of those whom his mental processes in interrogation had convicted for their ignorance. Near fifteen centuries later Savonarola, whose zeal would strike down sin and corruption, and establish the state with Christ's spirit as sovereign, found in the Florentine mob backed by Popery a counterpart to the hierarchs whose madness decreed the Crucifixion; and as false prophet he was condemned by an ecclesiastical council to die at the stake. These are but illustrations of countless instances of tribunals which, from the beginning of recorded time, have faltered or fallen in dispensing justice upon the issue of religious aspiration and ministry.

Jesus was sent by the Most High to administer to mankind the ethics and works of Divinity. The commission itself presupposed, in the Divine conception, as the premise demanding relief, the sin and corruption of rulers and states, and the futility of their courts. Under the test to which they were put in dealing with Jesus, only failure could result. Equally clear is it that that fact could be manifest to men and states only through the spectacle of a mighty sacrifice. Only thus could the Divine Plan—man's regeneration—be indelibly impressed upon the intended beneficiary. To make possible the reality of the sacrifice to mortal ken, an utterly sinless Man must appear and dispense those divine attributes which spell out Christ Jesus. To condemn unrighteous man and his institutions, a perfect Man must be unlawfully and cruelly condemned to and must die! Dying, He must absolve the persecutors and

the sinning World behind them. Alas! Only thus could Evil face Good and see therein at once its own degradation and its hope! When once even a falteringly immature analysis of that Plan is conceived of, the spiritual vision brings order out of confusion, and the mystery of Christ's ministry is solved.

But the glory of it all is, that in the last analysis the Alas! becomes the Amen! Bench and bar may rejoice with all mankind, in that Humanity and that Infinite Justice that perceives the imperfect in Man's contrivances, yet absolves the erring, if only the instrument will humbly realize his impotency and, acting up to the realization, appeal for aid to that inexhaustible Source of Wisdom from whence came this marvelous revelation of the ages—this Life—this Trial, so miserable a failure by man's standard, so triumphant of justice in the higher scale upon which was wrought out, through its very informalities, the real Trial—that of the World and its perverted institutions—into which Infinite Judgment guilt and regeneration were woven to form the Perfect Judgment Record.

Oh Jerusalem! To be the climax of the Romance Divine! To be the sorely besieged, the quest of the crusader, the subject of religious rivalries in earthly domain, yet to wear unchallenged the royal coronet of undying fame as the earthly seat of this Wrong which, through time and over Christendom, is working Righteousness. The mystery of where within her confines the wrongs were done, and where amid her suburbs the Crucifixion was, is reflected against the deeper secret of the Infinitely Just, making the quest of the pilgrim to the Holy City ineffably sweet, and the bond to Jehovah more tangible and abiding. The lawyer, strolling through that fateful landscape of legal procedure to find human effort marred by motive and usurped by interest, turns with relief to

the heart of Jerusalem from whence, somehow he cannot divine, there comes over the soul a wrapt serenity that vanishes perplexity, and reveals in clear conception the unfailing justice of the judicature of God.

Oh Palestine! Whose Jordan and whose seas are immortalized in the story of the Saviour! Whose wild flowers are so strangely set in harmony with her verdure and in contrast to her barrenness as to complete the panorama of unrivalled beauty in virility and in desolation. Whose dwellers still reflect the days of Jesus in customs and graces of the East. Her Nazareth, her Bethlehem, outrival the Holy City in mildness of outline, depth of sympathy and tenderness of memory.

Over all and through all that renders the Holy Land so attractive to all mankind, and so responsive to the ardent quest of the soul for satisfaction, extends the personality of Jesus, Who suffered and died upon the Cross, rose again and ascended to heaven, that man might, through Him as Teacher and Redeemer, morally and spiritually live, and move, and have his being.

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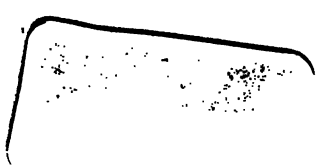
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